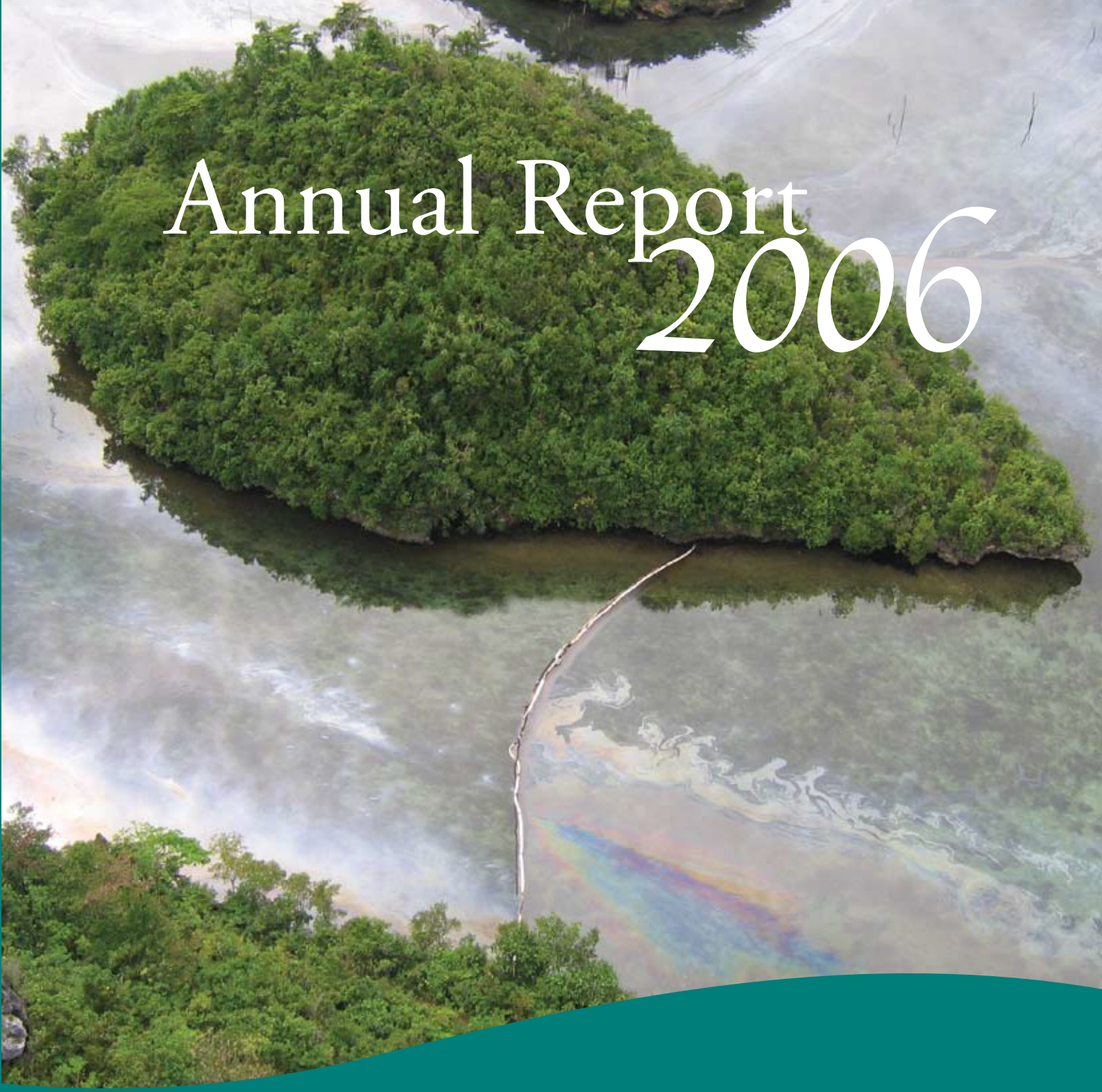
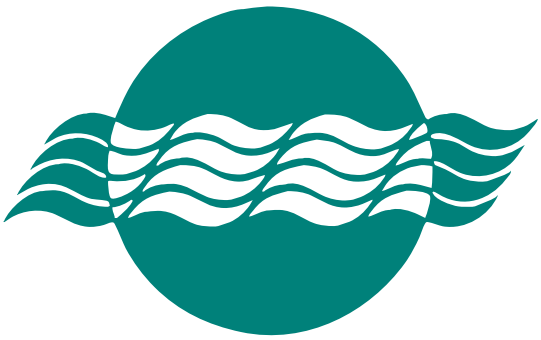


# Annual Report 2006

INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

# REPORT ON THE ACTIVITIES OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS IN 2006



Photograph on front cover:
*Pollution in the Philippines following the* Solar 1 *incident*

## Acknowledgements



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# FOREWORD

As Director of the International Oil Pollution Compensation Funds (IOPC Funds), I am pleased to present the Annual Report for the year 2006.

2006 has been an important and memorable year for the IOPC Funds, as it marked the transition of the directorship from Måns Jacobsson to myself. Måns Jacobsson has led the Funds extremely ably for 22 years, sometimes through stormy weather. He has also overseen the transformation of the Fund from a small organisation into a fully professional one with almost 100 Member States. We owe him our deep respect and gratitude for his accomplishments. During the October meetings of the governing bodies of the Funds, Måns Jacobsson gave an impressive final address at a special joint session of the three Funds.

In line with a good tradition of the IOPC Funds, the transition took place step by step between 1 September and 31 December 2006, with the formal handing over of responsibility on 1 November 2006. However, the success of such an arrangement depends very much on the outgoing Director and I am therefore truly grateful for the way Måns Jacobsson consistently involved me in major decisions he had to take between my election and my taking up the post.

Of great importance to the Funds was the entry into force on 20 February 2006 of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006. Subsequently, the October 2006 sessions of the 1992 Fund and the Supplementary Fund Assemblies approved procedures for implementing these agreements. These voluntary agreements aim to restore the financial balance in the international regime, which was designed to share the responsibility for providing compensation for pollution damage resulting from spills from tankers between the shipping and the oil receiving industries.

A Working Group on non-technical measures to promote quality transportation of oil by sea was established by the 1992 Fund Assembly at its extraordinary February session. The Group held its first session in May 2006.

*Willem Oosterveen*

Fortunately 2006 has not presented the Funds with many new incidents. The *Solar 1* incident was the first to fall within the scope of STOPIA 2006. Although limited in terms of financial impact, this incident has presented the Secretariat with new and significant challenges in terms of workload, since the number of claimants could well reach 25 000, most of whom are small-scale fisherfolk.

Together with the handling of the final stages of the *Erika* and *Prestige* incidents, the *Solar 1* will require a considerable amount of work from the Secretariat in 2007. Hopefully during 2007 the final winding up of the 1971 Fund will also come within sight, as well as the entry into force of the HNS Convention.

I hope that readers will find this Report interesting and that it will help them understand the role of the IOPC Funds within the international oil pollution compensation regime.

**Willem Oosterveen**
**Director**

# MESSAGE FROM THE OUTGOING DIRECTOR

When I took up the post of Fund Director 22 years ago, I had no idea what I was getting into. Had I known what was to follow, I doubt that I would have dared to take on the role. These have been challenging years, sometimes difficult, demanding but rewarding, and never dull. It has been a great privilege for me to serve the international community.

I would like to take this opportunity to thank the Governments of Fund Member States for the strong support they have given me and for their understanding of the difficulties that a Fund Director faces in reconciling the often conflicting interests of Member States. Let me also express my gratitude to the industries involved in the transport of oil, namely shipowners, insurers and the oil industry, as well as to other non-governmental bodies interested in Fund matters. I also have reason to be grateful for the support of the International Maritime Organization and its Secretary-Generals.

My special thanks go to all the members of the Funds' Secretariat, past and present. I have had the privilege of working with a very qualified, knowledgeable and loyal staff. Without their full support I would not have been able to carry out the functions of the Director. I would also like to pay tribute to the staff at the IOPC Funds' Claims Handling Offices and to the lawyers and technical experts who have assisted the Funds over the years.

During my time as Director the international liability and compensation regime based on the Civil Liability and Fund Conventions has developed into a truly global system. This regime is, in my view, a good example of an international solution to an international problem, facilitating co-operation between States at all levels of economic and social development to ensure compensation for those who suffer pollution damage as a result of oil spills from tankers, thereby contributing to the protection of the marine environment. It is very

*Måns Jacobsson*

encouraging that the international regime based on the 1992 Civil Liability and Fund Conventions has served as a model for the creation of similar regimes in other fields, such as the 1996 HNS Convention.

For me, as a former judge, it is especially rewarding that only relatively few incidents involving the Funds have given rise to court proceedings. In fact, the great majority of claims have been settled amicably as a result of negotiations.

In order for the international compensation regime to remain attractive to States and the international community, it must continue to meet the needs and aspirations of society in the 21st century. Only if this is achieved will it be possible to maintain a global compensation regime and avoid regionalisation which, in my view, would be detrimental to international shipping, to the international community at large and, in particular, to victims of oil pollution. I am convinced that Fund Member

States will, as they have done in the past, live up to the challenges and take the necessary steps to ensure the continued viability of the global compensation regime.

Finally I would like to wish my successor, Willem Oosterveen, every success in the challenging job he has taken on and thank him for the excellent co-operation we have had during the handing-over period. I know that the Funds will be in good hands.

**Måns Jacobsson**
**Director 1.1.1985-31.10.2006**

# CONTENTS

**ANNEXES**

# PREFACE

2006 has been a historic year for the IOPC Funds, with the appointment of only the third Director, Mr Willem Oosterveen of the Netherlands, since the 1971 Fund was established in 1978. With the support of his hard-working and competent staff, I feel confident that Mr Oosterveen will be an extremely effective Director of this important intergovernmental organisation.

His predecessor, Mr Måns Jacobsson, is of course a legend in his own lifetime. Having served the IOPC Funds for 22 years, his breadth and depth of knowledge and expertise are unrivalled, as was his dedication and sense of duty. On behalf of the governing bodies, I would like to express our deep appreciation for his leadership of the IOPC Funds and our very best wishes to him and his equally dedicated wife, Margareta, for a long and happy retirement.

*Jerry Rysanek*

The fact that no major oil spills from tankers have occurred during 2006 is a credit to the maritime transport industry as a whole and, of course, we all hope that no incidents occur which require the additional compensation available from the Supplementary Fund. The *Solar 1* incident, whilst not resulting in major damage, has nevertheless involved the IOPC Funds in compensating an unprecedented number of individual claimants. It is the first incident to involve the STOPIA 2006 agreement which was designed to share the costs of incidents involving small tankers more equitably between the shipping and cargo interests.

In May 2006, the Working Group established to consider non-technical measures to promote quality shipping for carriage of oil by sea held its first meeting. Like the Supplementary Fund and the voluntary STOPIA/TOPIA agreements, this Working Group was yet another outcome from the previous Working Group, which had been entrusted with the task of examining the adequacy of the international compensation regime. I hope that this new Working Group will be as productive.

The international compensation regime for compensation of oil spills from tankers has worked well but I sincerely hope that a similar regime for spills of hazardous and noxious substances (the HNS Convention) will enter into force before a major incident occurs. The continuation of the work which the Secretariat and Member States have been doing to prepare for the entry into force of this Convention is essential in this regard.

On behalf of the governing bodies, I would like to thank all those who have chaired meetings of the IOPC Funds during 2006: Mr John Gillies (Australia), Mrs Teresa Martins de Oliveira (Portugal), Ms. Birgit Sølling Olsen (Denmark), Captain Carlos Ormaechea (Uruguay) and Captain Esteban Pacha (Spain).

During the forthcoming year, my government will have the very great pleasure of welcoming the IOPC Funds to Canada, as the June 2007 meetings of the governing bodies will be held in Montreal, and I very much hope that a number of readers of this Report will be present at those meetings.

**Jerry Rysanek**
**Chairmen of the 1992 Fund Assembly**

# PART 1

# 1 INTRODUCTION

The International Oil Pollution Compensation Funds 1971 and 1992 and the International Oil Pollution Compensation Supplementary Fund (IOPC Funds) are intergovernmental organisations which provide compensation for oil pollution damage resulting from spills of persistent oil from tankers.

The International Oil Pollution Compensation Fund 1971 (1971 Fund) was established in October 1978 and it operates within the framework of two international Conventions. These are the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention).

This 'old' regime was amended in 1992 by two Protocols and the amended Conventions, known as the 1992 Civil Liability Convention and the 1992 Fund Convention, entered into force on 30 May 1996. The International Oil Pollution Compensation Fund 1992 (1992 Fund) was established under the 1992 Fund Convention. The 1992 Civil Liability Convention provides a first tier of compensation which is paid by the owner of a ship which causes pollution damage. The 1992 Fund Convention provides a second tier of compensation which is financed by receivers of oil after sea transport in States parties to the Convention.

A third tier of compensation for oil pollution damage, also financed by oil receivers, is available through the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund), established by a Protocol to the 1992 Fund Convention, which entered into force on 3 March 2005. Any State which is a Party to the 1992 Fund Convention may become party to the Supplementary Fund Protocol and thereby become a Member of the Supplementary Fund.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents taking place after that date. However, before the 1971 Fund can be wound up, all pending claims arising from incidents which occurred before that date in 1971 Fund Member States will have to be settled and any remaining assets distributed among contributors.

The 1969 Civil Liability Convention still remains in force in respect of 38 States. Although it was envisaged that States becoming Parties to the 1992 Civil Liability Convention would denounce the 1969 Convention, some States are still Parties to both, resulting in complex treaty relationships.

The 1969 and 1992 Civil Liability Conventions govern the liability of shipowners for oil pollution damage. These Conventions lay down the principle of strict liability for shipowners and create a system of compulsory liability insurance. The shipowner is normally entitled to limit liability to an amount which is linked to the tonnage of the ship.

The IOPC Funds provide supplementary compensation to anyone having suffered oil pollution damage in Member States who cannot obtain full compensation for the damage under the applicable Civil Liability Convention. The compensation payable by the 1971 Fund for any one incident is limited to 60 million Special Drawing Rights (SDR) (about £46 million or US$90 million).[1] The maximum amount of compensation payable by the 1992 Fund for any one incident is 203 million SDR (about £156 million or US$305 million) in respect of incidents occurring on or after 1 November 2003. For incidents which took place before that date, the maximum amount payable is 135 million SDR (about £104 million or US$203 million). For each Fund these amounts include the sum actually paid by the shipowner under the respective Civil Liability Convention.

The Supplementary Fund Protocol made available a total amount of 750 million SDR (£575 million or US$1 130 million) in compensation for pollution damage in States becoming Members of that Fund, including the amounts payable under the 1992 Conventions.



[1] *The unit of account in the treaty instruments is the Special Drawing Right (SDR) as defined by the International Monetary Fund. Conversion of currencies in this Report has been made on the basis of the rates at 29 December 2006 (on that day 1 SDR = £0.7683 or US$1.5044), except in respect of claims paid by the Funds where conversion has been made at the rate of exchange when the currency was purchased.*

The 1971 Fund has an Administrative Council which deals with both administrative and incident-related matters. The 1992 Fund is governed by an Assembly composed of all Member States and an Executive Committee comprising 15 Member States elected by the Assembly. The main function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims. The Supplementary Fund is governed by an Assembly composed of all States that are Members of that Fund.

The day-to-day operation of all three Funds is the responsibility of the Secretariat, headed by the Director.

*Assembly in session*

# 2 THE LEGAL FRAMEWORK

## Scope of application

The 1969 Civil Liability Convention and 1971 Fund Convention apply to spills of persistent oil from oil tankers that cause pollution damage in the territory (including the territorial sea) of a State Party to the respective Convention. Under the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol, however, the geographical scope is wider, with the cover extended to pollution damage caused in the exclusive economic zone (EEZ) or equivalent area of a State Party to the respective treaty instrument.

'Pollution damage' is defined in the 1969 and 1971 Conventions as loss or damage caused by contamination. The definition of 'pollution damage' in the 1992 Conventions and the Supplementary Fund Protocol has the same basic wording as the definition in the original Conventions, but with the addition of a phrase to clarify that compensation for impairment of the environment, other than loss of profit from such impairment, is limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. 'Pollution damage' includes the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

The 1969 and 1971 Conventions only apply to damage caused or measures taken after oil has escaped or been discharged. These Conventions do not apply to pure threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved. Under the 1992 Conventions and the Supplementary Fund Protocol, however, expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

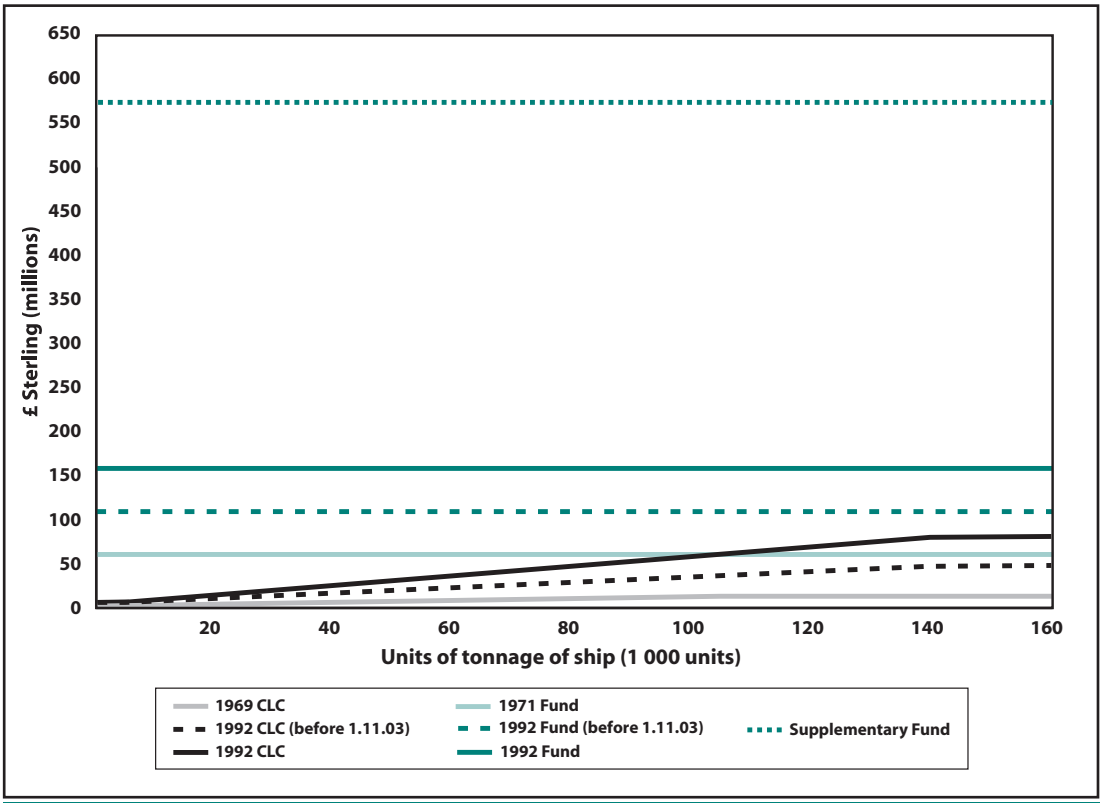
The 1969 and 1971 Conventions apply only to ships that actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions and the Supplementary Fund Protocol do apply to spills of bunker oil from unladen tankers provided they have residues of a persistent oil cargo aboard. None of these treaty instruments applies to spills of bunker oil from ships other than tankers.

## Shipowner's liability

Under the Civil Liability Conventions, the shipowner has strict liability for pollution damage caused by the escape or discharge of persistent oil from his ship. This means that he is liable even in the absence of fault on his part. He is exempt from liability only if he proves that:

- the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
- the damage was wholly caused by an act or omission done with the intent to cause damage by a third party, or

| Ship's tonnage | Incidents occurring before or on 31 October 2003 | Incidents occurring on or after 1 November 2003 |
|---|---|---|
| Ship not exceeding 5 000 units of gross tonnage | 3 000 000 SDR (£2.3 million or US$4.5 million) | 4 510 000 SDR (£3.5 million or US$6.8 million) |
| Ship between 5 000 and 140 000 units of gross tonnage | 3 000 000 SDR (£2.3 million or US$4.5 million) plus 420 SDR (£323 or US$632) for each additional unit of tonnage | 4 510 000 SDR (£3.5 million or US$6.8 million) plus 631 SDR (£484 or US$949) for each additional unit of tonnage |
| Ship of 140 000 units of gross tonnage or over | 59 700 000 SDR (£46 million or US$90 million) | 89 770 000 SDR (£69 million or US$135 million) |




*Limits laid down in the Conventions*

- the damage was wholly caused by the negligence or other wrongful act of public authorities in maintaining lights or other navigational aids.

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship.

Under the 1969 Civil Liability Convention, the shipowner's liability is limited to 133 Special Drawing Rights (SDR) (£102 or US$200) per ton of the ship's tonnage or 14 million SDR (£11 million or US$21 million), whichever is the less.

Under the 1971 Fund Convention the 1971 Fund indemnified, under certain conditions, the shipowner for part of his liability under the 1969 Civil Liability Convention. There are no corresponding provisions in the 1992 Fund Convention.

The original limits under the 1992 Civil Liability Convention, which were considerably higher than those under the 1969 Convention, were further increased by 50.73% for incidents occurring on or after 1 November 2003. These increases were decided by the Legal Committee of the International Maritime Organization (IMO), using a special procedure laid down in the 1992 Conventions (the 'tacit amendment procedure'). The limits under the 1992 Civil Liability Convention are set out in the table on page 17.

Under the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault, ie 'actual fault or privity'. Under the 1992 Convention, however, the shipowner is deprived of this right only if it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such

damage, or recklessly and with knowledge that such damage would probably result.

## Compulsory insurance

The shipowner is obliged to maintain insurance to cover his liability under the applicable Civil Liability Convention. This requirement only applies to ships carrying more than 2 000 tonnes of oil as cargo.

## Channelling of liability

Claims for pollution damage under the Civil Liability Conventions can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the Conventions from persons other than the shipowner. However, the 1969 Civil Liability Convention prohibits claims against the servants or agents of the shipowner. The 1992 Civil Liability Convention prohibits not only claims against the servants or agents of the shipowner, but also claims against the members of the crew, the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. This prohibition does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

## The IOPC Funds' obligations

The IOPC Funds pay compensation when those suffering oil pollution damage cannot obtain full compensation from the shipowner or his insurer under the applicable Civil Liability Convention in the following cases:

- the damage exceeds the limit of the shipowner's liability under the applicable Civil Liability Convention;
- the shipowner is exempt from liability under the applicable Civil Liability Convention because the damage was caused by a grave natural disaster, or was wholly caused by an act or omission done with the intent to cause damage by a third party or by the negligence of public authorities in maintaining lights or other navigational aids;
- the shipowner is financially incapable of meeting his obligations in full under the applicable Civil Liability Convention, and the insurance is insufficient to pay valid compensation claims.

The maximum compensation payable by the 1971 Fund in respect of one incident is 60 million SDR (about £46 million or US$90 million), irrespective of the size of the ship involved. As for the 1992 Fund the maximum amount payable is 203 million SDR (about £156 million or US$305 million) for incidents occurring on or after 1 November 2003, irrespective of the size of the ship. For incidents occurring before that date the maximum amount payable is 135 million SDR (about £104 million or US$203 million). These maximum amounts include the sums actually paid by the shipowner under the applicable Civil Liability Convention.

The Supplementary Fund makes additional compensation available so that the total amount payable for any one incident for pollution damage in a State that is a Member of that Fund is 750 million SDR (£575 million or US$1 130 million), including the amount payable under the 1992 Civil Liability and Fund Conventions.

## Time bar

Claims for compensation under the Civil Liability and Fund Conventions and the Supplementary Fund Protocol are time-barred (extinguished) unless legal action is brought against the shipowner and his insurer and against the 1971 or 1992 Fund within three years of the date when the damage occurred and in any event within six years of the date of the incident. A claim made against the 1992 Fund is regarded as a claim made against the Supplementary Fund. Rights to compensation from the Supplementary Fund are therefore extinguished only if they are extinguished as regards the 1992 Fund.

## Jurisdiction and enforcement of judgements

The courts in the Contracting State or States where the pollution damage occurred or where preventive measures were taken have exclusive jurisdiction over actions for compensation against the shipowner, his insurer and the IOPC Funds. A final judgement against the Funds by a Court competent under the applicable treaty which is enforceable in the State where it is rendered shall be recognised and enforceable in the other Contracting States.

## Structure and financing

The structure and financing of the IOPC Funds are described in sections 5, 8 and 9.

# 3 MEMBERSHIP OF THE IOPC FUNDS

## 3.1 1971 Fund

The 1971 Fund Convention ceased to be in force on 24 May 2002, when the number of Member States fell below 25, and does not apply to incidents occurring after that date. The 1971 Fund therefore has no Member States. As regards the winding up of the 1971 Fund reference is made to Section 6.

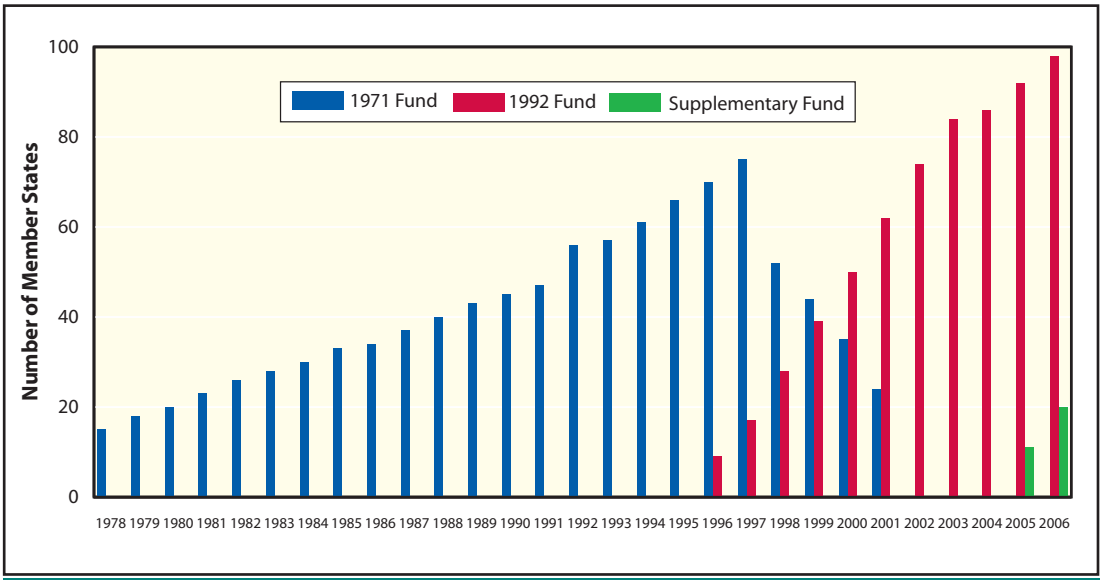
Of the 23 States which were Members of the 1971 Fund on 24 May 2002, 16 have acceded to the 1992 Fund Convention. However, seven of these States have not yet done so, namely Benin, Côte d'Ivoire, Gambia, Guyana, Kuwait, Mauritania and Syrian Arab Republic, whilst Indonesia, which was previously a member of the 1971 Fund, has also not become a Member of the 1992 Fund. It is hoped that these States will ratify the 1992 Fund Convention in the near future.

## 3.2 1992 Fund

The 1992 Fund Convention entered into force on 30 May 1996 for nine States. By

**98 STATES FOR WHICH THE 1992 FUND CONVENTION IS IN FORCE (AND THEREFORE MEMBERS OF THE 1992 FUND)**

Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Bahamas
Bahrain
Barbados
Belgium
Belize
Brunei Darussalam
Bulgaria
Cambodia
Cameroon
Canada
Cape Verde
China (Hong Kong Special Administrative Region)
Colombia
Comoros
Congo
Croatia
Cyprus
Denmark
Djibouti
Dominica
Dominican Republic
Estonia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Grenada
Guinea
Iceland
India
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Latvia
Liberia
Lithuania
Luxembourg
Madagascar
Malaysia
Maldives
Malta
Marshall Islands
Mauritius
Mexico
Monaco
Morocco
Mozambique
Namibia
Netherlands
New Zealand
Nigeria
Norway
Oman
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Seychelles
Sierra Leone
Singapore
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Arab Emirates
United Kingdom
United Republic of Tanzania
Uruguay
Vanuatu
Venezuela




*Annual membership of the 1971 and 1992 Funds*

the end of 2006, 98 States had become Members of the 1992 Fund, as set out on page 21.

It is likely that a number of other States will become Members of the 1992 Fund in the near future.

## 3.3 Supplementary Fund

By the end of 2006, 19 States had become Members of the Supplementary Fund. One further State had acceded to the Supplementary Fund Protocol and will become a Member in January 2007, as set out below.

## 3.4 Developments over the years

The graph above shows developments as regards the number of Member States of the 1971 Fund, 1992 Fund and Supplementary Fund over the years.

**19 STATES PARTIES TO THE 2003 SUPPLEMENTARY FUND PROTOCOL (AND THEREFORE MEMBERS OF THE SUPPLEMENTARY FUND)**

| | | |
|---|---|---|
| Barbados | Ireland | Portugal |
| Belgium | Italy | Slovenia |
| Croatia | Latvia | Spain |
| Denmark | Lithuania | Sweden |
| Finland | Japan | United Kingdom |
| France | Netherlands | |
| Germany | Norway | |

**1 STATE WHICH HAS DEPOSITED AN INSTRUMENT OF ACCESSION, BUT FOR WHICH THE PROTOCOL DOES NOT ENTER INTO FORCE UNTIL DATE INDICATED**

| | |
|---|---|
| Greece | 23 January 2007 |

# 4 EXTERNAL RELATIONS

## 4.1 Promotion of 1992 Fund membership and information on Fund activities

The Secretariat has continued its efforts to increase the number of 1992 Fund Member States. To this end, the Director and other members of the Secretariat visited several non-Member States, participating in seminars and conferences in a number of countries and giving lectures on liability and compensation for oil pollution damage and on the operation of the 1992 Fund. Members of the Secretariat also participated in several workshops on the handling of compensation claims. As in previous years, the Director lectured to students at the World Maritime University in Malmö (Sweden), providing the opportunity to disseminate information on the 1992 Fund and the international compensation regime to students who will eventually return to their administrations throughout the world. He also lectured to students at the Dalian Maritime University and the Shanghai Maritime University (People's Republic of China), the University of Edinburgh, the University of Southampton and the University of Wales, Swansea (United Kingdom). Lectures have also been given by members of the Secretariat at the IMO International Maritime Law Institute in Malta and at the University of La Coruña in Spain. Students from Barcelona, Bilbao, Ghent and Valencia universities have visited the Secretariat.

In order to establish and maintain personal contacts between the Secretariat and officials within the national administrations dealing with Fund matters, the Director and other members of the Secretariat visited a number of 1992 Fund Member States during 2006 for discussions with government officials on the international compensation regime and the operations of the IOPC Funds.

For the purpose of promoting membership of the 1992 Fund and the Supplementary Fund, the Director and other members of the Secretariat had discussions with government representatives of non-Member States in connection with IMO meetings, in particular during the sessions of the IMO Council and Legal Committee.

Former Member States of the 1971 Fund automatically have observer status with the 1992 Fund. In addition, the 1992 Fund Assembly has granted observer status to a number of States that have never been parties to either Fund Convention. At the end of 2006 the non-Member States set out in the table below had observer status with the 1992 Fund (former 1971 Fund Member States are indicated with an asterisk).

## 4.2 Relations with international organisations and interested bodies

The IOPC Funds co-operate closely with many intergovernmental and international non-governmental organisations, as well as with bodies set up by private interests involved in the maritime transport of oil.

The following intergovernmental organisations have been granted observer status with the IOPC Funds:

**NON-MEMBER STATES WITH OBSERVER STATUS**

Brazil
Benin*
Chile
Côte d'Ivoire*
Democratic People's Republic of Korea
Ecuador
Egypt
Gambia*
Guyana*
Indonesia*
Iran, Islamic Republic of
Kuwait*
Lebanon
Mauritania*
Pakistan
Peru
Saudi Arabia
Syrian Arab Republic*
United States

- United Nations
- International Maritime Organization (IMO)
- United Nations Environment Programme (UNEP)
- Baltic Marine Environment Protection Commission (Helsinki Commission)
- Central Commission for Navigation on the Rhine (CCNR)
- European Commission
- International Institute for the Unification of Private Law (UNIDROIT)
- Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC)

The IOPC Funds have particularly close links with IMO and co-operation agreements have been concluded between the Funds and that organisation. During 2006 the Secretariat represented the IOPC Funds at meetings of the IMO Council and Legal Committee and other IMO bodies dealing with issues of interest to the Funds.

The following international non-governmental organisations have observer status with the IOPC Funds:

- Advisory Committee on Protection of the Sea (ACOPS)
- BIMCO
- Comité Maritime International (CMI)
- Conference of Peripheral Maritime Regions (CPMR)
- European Chemical Industry Council (CEFIC)
- Federation of European Tank Storage Associations (FETSA)
- Friends of the Earth International (FOEI)
- International Association of Classification Societies Ltd (IACS)
- International Association of Independent Tanker Owners (INTERTANKO)
- International Chamber of Shipping (ICS)
- International Group of P & I Clubs
- International Salvage Union (ISU)
- International Tanker Owners Pollution Federation Limited (ITOPF)
- International Union for the Conservation of Nature and Natural Resources (IUCN)
- International Union of Marine Insurance (IUMI)
- Oil Companies International Marine Forum (OCIMF)

## 4.3 Website

The IOPC Funds have a trilingual website (www.iopcfund.org) containing information on the Organisations and their activities in English, French and Spanish. During 2006, information on conferences, seminars and workshops participated in, or organised by, the IOPC Funds was added to the website reflecting the increasing outreach activities of the Organisations.

## 4.4 Publications

During 2006, the 1992 Fund published an updated brochure containing a brief description of the international compensation regime in English, French and Spanish.

## 4.5 Document Server

The IOPC Funds have established a Document Server to provide delegates to the Funds' governing bodies and the general public with access to documents for Fund meetings via the IOPC Funds' website. By the end of 2005 the Document Server contained documents covering all meetings from January 2001 onwards. During 2006 the Document Server was expanded to include meeting documents going back to October 1986. The project will be completed in early 2007 to include all meeting documents from the setting up of the 1971 Fund in November 1978.

## 4.6 Participation in Interspill 2006

In 2006 the IOPC Funds participated in Interspill 2006, an international conference and exhibition held in London on the theme of 'Changing energy patterns, changing spill risks', which addressed spill prevention and response at sea and on inland waters. This was the first such conference supported by the IOPC Funds through representation on the organising and programme committees. It was also the first occasion at which the IOPC Funds had their

own stand at the exhibition along with 140 other exhibitors. Some 1 300 participants from 71 countries attended the conference and exhibition.

Interspill 2006 ran parallel sessions covering marine transportation, exploration and production, inland spills and waste management as well as scientific developments. The Deputy Director chaired a session on legislation and policy in the maritime transportation sector and the Director presented a paper on compensation regime developments. Prior to the conference the IOPC Funds ran a one-day claims workshop, which was attended by participants from the public and private sectors.

# 5 THE FUNDS' GOVERNING BODIES

Under the 1971 Fund Convention, the 1971 Fund had an Assembly and an Executive Committee. However, in 1998 it became evident that as a result of diminishing membership, and that many of the remaining Member States did not send representatives to meetings, there was an imminent risk that those bodies would be unable to achieve a quorum. The Assembly therefore adopted a Resolution establishing an Administrative Council which would act on behalf of the Assembly when the latter did not achieve a quorum. Since October 1998 the Administrative Council (which does not have any quorum requirement) has fulfilled the roles of the Assembly and the Executive Committee and therefore deals with both administrative and incident-related matters. The Council also focuses on the winding up of the 1971 Fund.

The 1971 Fund Administrative Council held sessions in February/March, May and October 2006. All sessions were chaired by Mrs Teresa Martins de Oliveira (Portugal). The main decisions taken by the Administrative Council at these sessions regarding incidents involving the 1971 Fund are reflected in Section 14 in the context of particular pollution incidents involving that Fund.

The 1992 Fund has an Assembly composed of all Member States and an Executive Committee of 15 Member States elected by the Assembly. The main function of the Executive Committee is to take policy decisions concerning the admissibility of compensation claims.

*Teresa Martins de Oliveira*

In 2002 the 1992 Fund Assembly recognised that, because of the growth in the number of Member States, and the lack of attendance of many Member States, it might be unable to achieve a quorum at future sessions. The Assembly therefore adopted a similar Resolution establishing an Administrative Council for the 1992 Fund. The quorum requirement for this Administrative Council was set at 25 Member States.

The 1992 Fund Assembly held an extraordinary session in February/March 2006 and its ordinary autumn session in October 2006. A session of the Administrative Council acting on behalf of the Assembly was held in May 2006 since the Assembly was unable to achieve a quorum. All sessions were held under the chairmanship of Mr Jerry Rysanek (Canada).

The 1992 Fund Executive Committee held four sessions during 2006. The first three, held in February/March, May and October, were chaired by Captain Carlos Ormaechea (Uruguay). The last session, also in October 2006, was chaired by Mr John Gillies (Australia). The main decisions taken by the 1992 Fund Executive Committee at these sessions are reflected in Section 15 in the context of particular pollution incidents involving that Fund.

The Supplementary Fund has an Assembly composed of all States which are Parties to the Supplementary Fund Protocol. It held two extraordinary sessions in March and May, and an ordinary session in October 2006. All sessions were chaired by Captain Esteban Pacha (Spain).

On the occasion of the last sessions of the governing bodies before the new Director took up office on 1 November 2006, the outgoing Director, Mr Måns Jacobsson of Sweden, who had held the post of Director of the IOPC Funds for nearly 22 years, made a final address at a

special joint session of the three Funds on 27 October 2006. This special session also gave an opportunity for the new Director, delegates and special guests, including the Ambassador of Sweden and the Ambassador of the Netherlands to the United Kingdom, to pay tribute to Mr Jacobsson's outstanding career and invaluable contribution to the international compensation regime.

During this special joint session, the Director Elect, Mr Willem Oosterveen of the Netherlands, took an oath before the governing bodies of the 1971 Fund, the 1992 Fund and the Supplementary Fund as the new Director of the IOPC Funds.

*Carlos Ormaechea*

At the sessions the governing bodies dealt with the following main issues:

## Decisions relating to all three Organisations

**October 2006**

- At their October 2006 sessions the 1971 Fund Administrative Council and the 1992 Fund Assembly noted with appreciation the External Auditor's Reports and his Opinions on the Financial Statements of the 1971 Fund and the 1992 Fund for 2005, and noted that the Auditor had provided an unqualified audit opinion on the financial statements following a rigorous examination of the financial operations and accounts in conformity with international standards on auditing and best practice. The Supplementary Fund Assembly noted the unqualified audit opinion on that Fund's 2005 financial statements, also following such a rigorous examination. The governing bodies of the three Funds approved the accounts for the financial year ending 31 December 2005 (see Section 8.4), as recommended by the Organisations' joint Audit Body.
- The Assembly re-appointed the Comptroller and Auditor General of the United Kingdom as External Auditor for the 1971 Fund, the 1992 Fund and the Supplementary Fund for a term of four years from 1 January 2007.
- The governing bodies considered that the situation in respect of the non-submission of oil reports by a number of States continued to be a matter of serious concern, since without such reports the Secretariat could not levy contributions in respect of oil receivers in those States (see Section 9.1).
- The governing bodies reviewed the list of international non-governmental organisations having observer status with the Funds in order to determine whether the continuance of observer status was of mutual benefit. Observer status was confirmed for all those organisations.

## Decisions relating to the 1992 Fund and the Supplementary Fund

**February/March 2006**

- At their February/March 2006 sessions, the Assemblies of the 1992 Fund and the Supplementary Fund noted that two voluntary industry agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 had entered into force on 20 February 2006. In respect of the agreements reference is made to Section 10.

*Esteban Pacha*

**October 2006**

- The Assemblies of the 1992 Fund and the Supplementary Fund approved the procedures required to implement the voluntary agreements, STOPIA 2006 and TOPIA 2006, which had been agreed with the International Group of P&I Clubs (see Section 10).

## Decisions relating to the 1992 Fund only

**February 2006**

- The 1992 Fund Assembly established a Working Group on non-technical measures to promote quality shipping for carriage of oil by sea and adopted the Group's terms of reference (see Section 7). It was decided that the Working Group would be open to all governments, inter-governmental and non-governmental organisations, which had the right to participate in the 1992 Fund Assembly. The Working Group was instructed to consider non-technical measures and guidelines falling under the responsibility of Contracting States as well as industry procedures and practices. It was emphasised that the Working Group should not stray into the areas of competence of IMO. It was also emphasised that the Working Group should not consider issues that would require any reopening of discussions regarding a revision of the 1992 Conventions.

**May 2006**

- The International Association of Classification Societies Ltd (IACS) was granted Observer Status.

**October 2006**

- The 1992 Fund Assembly elected the following States as members of the 1992 Fund Executive Committee:

| | |
|---|---|
| Australia | Japan |
| Bahamas | Lithuania |
| Cameroon | Malaysia |
| Canada | Netherlands |
| Denmark | Singapore |
| France | Spain |
| Gabon | Turkey |
| Germany | |

- The Assembly adopted the budget for 2007 for the administrative expenses for the joint Secretariat totalling £3 590 750.
- The Assembly decided to levy contributions of £3 million to the General Fund due for payment by 1 March 2007. It also decided that there should be no levy of 2006 contributions to the *Erika* and *Prestige* Major Claims Funds.
- The Assembly noted the developments in respect of the ratification and implementation of the 1996 International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention) (see Section 11).
- The Assembly took note of the results of the Director's enquiries to all Member States as to whether the 1992 Conventions had been fully implemented into their national law. The Director had contacted

all 98 States which had ratified the 1992 Fund Convention, of which 54 had confirmed that the Conventions had been fully implemented whereas 14 had stated that the Conventions had not been implemented into national legislation. The Assembly also took note of the Director's disappointment that, despite having been contacted repeatedly both in writing and by telephone since April 2005, 30 of the 98 States had still not stated whether or not the 1992 Conventions had been fully implemented into their national law. The Assembly instructed the Director not to continue to make efforts to obtain responses from those States which had still not responded to his enquiries but to focus future efforts on those States which in their responses had informed him that the 1992 Conventions had not been fully implemented into their national law.

- The Assembly took note of the report of the Working Group on non-technical measures to promote quality shipping for carriage of oil by sea, which had held its first meeting in May 2006 (see Section 7).
- The Assembly approved the text of a new Headquarters Agreement between the United Kingdom Government and the 1992 Fund which had provisionally been agreed with that Government. The text requires approval by the parliament of the United Kingdom.
- The Assembly took note of the information given by the Director on the lessons learned from the *Erika* incident.
- In connection with the consideration by the Executive Committee in February/March 2006 of a claim by the Spanish Government for the cost of the operation to remove the remaining oil from the wreck of the *Prestige*, many delegations had expressed views on the policy of the Funds on the interpretation and application of the criteria for the admissibility of claims for the costs of preventive measures and on the desirability of changing that policy so as to make it more flexible. As a result of its consideration of this issue the Executive Committee had instructed the Director to carry out an examination of admissibility criteria relating to claims for costs of preventive measures, in particular for the extraction of oil from sunken vessels, with a view to enabling the Assembly to discuss possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions. In its consideration of the Director's report on his examination of this issue in October 2006, the Assembly recalled that under the criteria for admissibility adopted by the Funds' governing bodies claims for the costs of preventive measures should be assessed on the basis of objective criteria. The Assembly decided not to widen the Fund's admissibility criteria relating to costs of preventive measures so as to include social and/or political considerations. It also decided that when considering the reasonableness of preventive measures account should be taken of the potential environmental damage which could be caused if the measures were not taken and that the Fund's Claims Manual should be amended accordingly. The Assembly further decided that the 1992 Fund should adopt specific sub-criteria for claims for costs of removing oil from sunken vessels and that an appropriate text to this effect should be included in the Claims Manual. The Director was instructed to develop such a text in consultation with the French and Spanish delegations for consideration by the Assembly.
- The Assembly considered a study by the Director as to whether permanently anchored vessels engaged in ship-to-ship (STS) oil transfer operations fell within the definition of 'ship' in the 1992 Civil Liability Convention, as interpreted by the Assembly, and whether contributing oil received by such vessels should be considered as received for the purpose of Article 10.1 (a) of the 1992 Fund Convention and therefore be taken into account for the purpose of the levying of contributions.

*The Chairs of the governing bodies attending a special joint session in October 2006*

The Assembly decided that permanently and semi-permanently anchored vessels engaged in STS oil transfer operations should be regarded as 'ships' only when they carried oil as cargo on a voyage to or from a port or terminal outside the location in which they normally operated, but that in any event the decision as to whether such a vessel fell within the definition should be decided in the light of the particular circumstances of the case.

The Assembly further decided that all contributing oil received by such vessels when operating in the territory, including the territorial waters, of a State Party to the 1992 Fund Convention, should be considered as received for the purpose of Article 10.1 (a) of that Convention and therefore be taken into account for the levying of contributions. It also decided to amend the explanatory notes attached to the 1992 Fund form for reporting contributing oil received to reflect this decision.

- The Assembly decided to publish Technical Guidelines on methods of assessing losses in the fisheries and mariculture sectors prepared by the Director.
- The Assembly re-elected Mr Jerry Rysanek (Canada) at its Chairman and Professor Seiichi Ochiai (Japan) and Mr Edward K Tawiah (Ghana) as its Vice-Chairmen.

## Decisions relating to the Supplementary Fund only

**October 2006**

- At its October 2006 session the Supplementary Fund Assembly adopted the 2007 budget for the administrative expenses of the Supplementary Fund with a total of £85 000 (including the management fee of £70 000 payable to the 1992 Fund).
- The Assembly decided to maintain the

working capital at £1 million fixed in October 2005.

- The Assembly decided to levy contributions of £1.4 million (including the working capital of £1 million) to the General Fund payable by 1 March 2007. It was further decided that, since there had been no incidents which would or might require the Supplementary Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund (see Section 9.2).
- The Assembly approved the text of the Headquarters Agreement which had been provisionally agreed with the host government. The text required approval by the parliament of the United Kingdom.
- The Assembly elected Rear-Admiral Giancarlo Olimbo (Italy) as its Chairman, and Mrs Birgit Søllen Olsen (Denmark) and Mr Hidetoshi Ohno (Japan) as its Vice-Chairpersons.

## Decisions relating to the 1971 Fund only

**October 2006**

- In October 2006 the Administrative Council adopted the 2007 budget for the administrative expenses of the 1971 Fund with a total of £535 000 (including a management fee of £275 000 payable to the 1992 Fund).
- The Administrative Council decided that there should be no levies of 2006 contributions in respect of the three remaining Major Claims Funds, namely those in respect of the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* incidents (see Section 9.2).
- The Administrative Council re-elected Mrs Teresa Martins de Oliveira (Portugal) as its Chairperson, and elected Captain David J. F. Bruce (Marshall Islands) as Vice-Chairman.

# 6 WINDING UP OF THE 1971 FUND

## 6.1 Termination of the 1971 Fund Convention

As mentioned in Section 3.1, the 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

The termination of the 1971 Fund Convention does not result in the immediate liquidation of the 1971 Fund as the Organisation has to meet its obligations in respect of pending incidents. During 2006 significant progress was made towards the winding up of the 1971 Fund. It is expected that by the end of 2007 compensation claims will be outstanding only in respect of a very small number of incidents. Steps will be taken to ensure that the 1971 Fund is liquidated and wound up in a proper manner as soon as possible.

## 6.2 Procedure for winding up the 1971 Fund

In October 2006 the Administrative Council considered certain issues which will have to be addressed during the winding-up period, namely the timescale for the settlement of all remaining claims in respect of pending incidents and for the recourse actions taken by the 1971 Fund in respect of certain incidents. The Council considered what action should be taken in respect of the contributors in arrears and the problem caused by a number of States not having fulfilled their treaty obligation under the 1971 Fund Convention to submit oil reports. These issues will be considered further in 2007.

The Council noted the considerable improvement in the situation as regards contributors in arrears, with the number decreasing from 27 to 12 during the last four years. The Council instructed the Director to continue his efforts to make the contributors who were in arrears pay the amounts due and consider, on a case-by-case basis, whether legal action should be taken against a particular contributor or whether other steps would be more effective.

In October 2003 the Administrative Council decided that reimbursement of surpluses from any Major Claims Funds (after offset had been made against any arrears) to contributors in States with outstanding reports should be postponed until all contributing oil reports for that State had been submitted. As decided at the Council's October 2005 session, the former 1971 Fund Member States with outstanding oil reports are listed on the IOPC Funds' website.

# 7 WORKING GROUP ON NON-TECHNICAL MEASURES TO PROMOTE QUALITY SHIPPING

## 7.1 Establishment of Working Group

At its February/March 2006 session the 1992 Fund Assembly established a Working Group to consider non-technical measures to promote quality shipping for carriage of oil by sea with the following mandate:

- to develop proposals in respect of non-technical measures and guidelines for Contracting States and the industry to promote quality shipping by ensuring that effective checks and procedures are in place to establish that ships insured and certificated are suitable for the carriage of oil by sea covered under the Civil Liability Convention/Fund Convention regime;
- to identify related issues, other than those referred to below, as it may deem helpful to complete its task within the current Conventions and make the appropriate recommendations to the Assembly;
- to make recommendations to the Assembly upon the completion of its work.

The Assembly also decided that in conducting its work, the Working Group should focus on the following:

- consider and make proposals on the development of common criteria to be uniformly applied by Contracting States to ensure that fully effective insurance is in place before States issue Certificates under the Civil Liability Convention;
- identify factors that prevent the sharing of information between marine insurers and seek to develop a common policy or other measures that would facilitate such sharing of information;
- identify practical measures to achieve better and more transparent co-ordination between insurers, shipowners and cargo interests that would promote quality shipping;
- consider possible measures for the denial or withdrawal of insurance cover in order to improve the safer transport of oil;
- consider the feasibility and impact of differentiated insurance rates and premiums that would encourage quality shipping;
- examine ways of encouraging and strengthening the participation of classification societies in the promotion of quality shipping.

The Assembly emphasised that the Working Group should not stray into areas of competence of IMO nor duplicate work which had been undertaken by that organisation. The Assembly stated that the Working Group should bear in mind the work done on quality shipping in other fora, such as the study on insurance carried out within the Organisation for Economic Co-operation and Development (OECD). The Assembly also emphasised that the Working

*Birgit Søllen Olsen*

Group should not consider issues that would require any re-opening of the discussion regarding a revision of the 1992 Conventions.

### First meeting of the Working Group

The Working Group had held its first meeting in May 2006, electing Mrs Birgit Sølling Olsen (Denmark) as its Chairperson.

The Working Group focused on current and planned procedures and practices of the marine insurance industry and States to promote quality shipping, and also discussed the sharing of information relating to the quality of shipping and barriers to sharing such information.

The Working Group decided to undertake a study to:

- identify factors that allow/require/prevent marine insurers and other business endeavours from sharing information on clients, including national legislation and practices;
- identify whether competition law and practices take into consideration the need for taking measures to encourage quality shipping for the transportation of oil.

The Working Group decided to invite the International Maritime Committee (CMI) to undertake the above-mentioned study.

The Working Group also decided to undertake a study to determine the extent to which the main focus of the Group's attention should be on ships falling outside the ambit of the classification societies belonging to the International Association of Classification Societies and the liability insurers belonging to the International Group of P&I Clubs.

## 7.2 Contacts with CMI

As a result of contacts between the Director and CMI, CMI had indicated that competition law was not a speciality of the lawyers belonging to the organisation and that it would probably be necessary for them to engage appropriate consultants, which would have budgetary implications.

After discussion with CMI, the Director wrote to the relevant non-governmental organisations, namely ICS, INTERTANKO, OCIMF and the International Group of P&I Clubs, inviting them to elaborate on the problems that they had faced with regard to the free exchange of information and to indicate whether similar problems had arisen in other areas and, if so, whether any solutions had been found to overcome them. The Director took the view that once the problem had been defined more precisely, the Director and CMI would be in a better position to consider how and by whom the study should be conducted and could recommend to the Working Group a way forward.

## 7.3 Consideration at the 1992 Fund Assembly

At its October 2006 session the Assembly took note of the Working Group's report of its first meeting and the steps taken by the Director.

The Assembly noted that the Working Group recommended that a tentative deadline of October 2008 be set for the completion of its work, which would allow four to five meetings to be held.

## 7.4 Next meeting of the Working Group

The Working Group's next meeting will be held during the week of 12 March 2007.

# 8 ADMINISTRATION OF THE IOPC FUNDS

## 8.1 Secretariat

The 1971 Fund, 1992 Fund and Supplementary Fund have a joint Secretariat headed by one Director. Throughout 2006 the Secretariat continued to face considerable challenges. The strong commitment of the staff to their work, as well as their knowledge and expertise, are important assets to the IOPC Funds and are crucial to the efficient functioning of the Secretariat.

The IOPC Funds continue to use external consultants to obtain advice on legal and technical matters in relation to incidents. In connection with a number of major incidents the Funds and the shipowner's liability insurer involved have jointly established local claims offices to facilitate the efficient handling of the great numbers of claims submitted and, in general, to assist claimants.

In the majority of incidents involving the IOPC Funds, clean-up operations are monitored and claims are assessed in close co-operation between the Funds and the shipowner's liability insurer, which in most cases is one of the mutual Protection and Indemnity Associations ('P&I Clubs'). The technical assistance required by the Funds with regard to oil pollution incidents is usually provided by the International Tanker Owners Pollution Federation Limited (ITOPF), supported by a world-wide network of technical experts.

## 8.2 Change of Director

Mr Måns Jacobsson, who had held the post of Director since 1 January 1985, was succeeded on 1 November 2006 by Mr Willem Oosterveen. Mr Oosterveen, who was elected by the governing bodies in October 2005, joined the Secretariat on 1 September 2006 and took over as Director on 1 November 2006. Mr Jacobsson retained full responsibility for the Organisations up to 31 October 2006 and continued to be available until his retirement on 31 December 2006.

## 8.3 Risk Management

During 2006 the Director continued a review of the IOPC Funds' risk management and the work towards developing a risk register. In close co-operation with the Audit Body, and with the assistance of consultants and the External Auditor, five areas of risk have been identified, namely: reputation risk, claims-handling process, financial risk, human resource management and business continuity. Under these five areas the sub-risks have been mapped and assessed, following which the process and procedures for management are being documented. The Audit Body and the External Auditor have made valuable contributions to the work in this field. It is expected that the project will be completed during 2007.

## 8.4 Financial statements for 2005

As in previous years the financial statements of the 1971 Fund and the 1992 Fund were audited by the Comptroller and Auditor General of the United Kingdom, who also audited the accounts of the Supplementary Fund for the period from its establishment on 3 March 2005.

The financial statements of the 1971 Fund and the 1992 Fund for the period 1 January to 31 December 2005 and the financial statements of the Supplementary Fund for the period 3 March to 31 December 2005 were approved by the respective governing bodies during their sessions in October 2006.

The Auditor's reports on the 1971 Fund and the 1992 Fund are reproduced in full in Annexes III and IX respectively and his opinions on each financial statement are reproduced in Annexes IV and X. Summaries of the information contained in the audited statements for this period are given in Annexes V to VIII for the 1971 Fund and in Annexes XI to XIV for the 1992 Fund.

As regards the 1971 Fund and the 1992 Fund separate Major Claims Funds are established for incidents for which the total amounts payable exceed 1 million Special Drawing Rights (SDR) (£770 000) for the 1971 Fund or 4 million SDR (£3.1 million) for the 1992 Fund; conversion from SDR to Pounds Sterling is made at the rate

applicable at the date of the incident in question. There are separate income and expenditure accounts for the General Fund and for each Major Claims Fund.

In view of the limited financial activity of the Supplementary Fund during the period 3 March 2005 to 31 December 2005, the External Auditor had decided not to produce any report on the accounts for that period. The External Auditor did express an opinion on the financial statements of the Supplementary Fund which is set out in Annex XV. A summary of the information contained in the audited statements for the Supplementary Fund for this period is given in Annex XVI.

The administrative expenses for the joint Secretariat totalled £2 859 699 in 2005, compared to a budgetary appropriation of £3 372 600.

### 1971 Fund

No annual contributions were due in respect of the General Fund during 2005 as it is no longer possible to levy contributions to the General Fund. No contributions were due during 2005 in respect of any Major Claims Funds. Surpluses totalling £9.65 million on closure of four Major Claims Funds were reimbursed to contributors on 1 March 2005.

Claims and claims-related expenditure for 2005 amounted to £224 365. The majority of this expenditure related to two cases, namely the *Nissos Amorgos* and *Pontoon 300* incidents.

The balance sheet of the 1971 Fund as at 31 December 2005 is reproduced in Annex VII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at over £90 million in respect of claims arising from 11 incidents.

### 1992 Fund

Contributions of £5.4 million in respect of the General Fund and £33 million for the *Prestige* Major Claims Fund were due during 2005. A reimbursement of £600 000 was made to contributors to the *Nakhodka* Major Claims Fund. Claims and claims-related expenditure during 2005 was £17.4 million. The payments related mainly to the *Erika* and *Prestige* incidents.

The balance sheet of the 1992 Fund as at 31 December 2005 is reproduced in Annex XIII. The balances of the various Major Claims Funds are also given. The contingent liabilities were estimated at £121 million in respect of claims and claims-related expenditure arising from eight incidents.

### Supplementary Fund

As mentioned above, the financial period ran from 3 March to 31 December 2005. The total obligations incurred by the Supplementary Fund in 2005 amounted to £177 742 compared to the total appropriation of £225 000, resulting in an underspend of £47 258. The obligations incurred also included payments in the form of loans made by the 1992 Fund on behalf of the Supplementary Fund totalling £47 947 and interest due to the 1992 Fund on these loans. There were no incidents involving the Supplementary Fund during 2005.

## 8.5 Financial statements for 2006

The financial statements of the 1971 Fund, 1992 Fund and Supplementary Fund for the period 1 January to 31 December 2006 will be submitted to the External Auditor in the spring of 2007 and will be presented to the respective governing bodies for approval at their sessions in October 2007. These accounts will be reproduced in the IOPC Funds' 2007 Annual Report.

The following preliminary information is given on the financial operations during 2006. The figures, which have been rounded, have not yet been audited by the External Auditor. Further details are given in Annexes XVII, XVIII and XIX respectively.

The administrative expenses for operating the joint Secretariat in 2006 total some £3.2 million, compared to a budget appropriation of £3 541 400.

### 1971 Fund

With respect to the 1971 Fund, no annual contributions were due in 2006 to the three remaining Major Claims Funds.

The total claims expenditure incurred by the 1971 Fund during 2006 was approximately £621 000, out of which some £276 000 related to the *Pontoon 300* incident.

The 1971 Fund paid a management fee of £275 000 to the 1992 Fund towards the administrative costs of the joint Secretariat.

### 1992 Fund

No contributions were due in 2006.

The 1992 Fund's claims payments during 2006 totalled some £54 511 000, out of which some £42 million related to the *Prestige* incident, £9.4 million to the *Erika* incident and £2 million to the *Solar 1* incident.

### Supplementary Fund

The Supplementary Fund paid a management fee of £70 000 to the 1992 Fund towards the administrative costs of the joint Secretariat. The Supplementary Fund had no contributions due in 2006.

There were no incidents involving the Supplementary Fund during 2006.

## 8.6 Investment of funds

### Investment policy

In accordance with the Financial Regulations of the IOPC Funds, the Director is responsible for the investment of any funds which are not required for the short-term operation of each Fund. In making any investments all necessary steps are taken to ensure the maintenance of sufficient liquid funds for the operation of the respective Fund, to avoid undue currency risks and to obtain a reasonable return on the investments of each Organisation. The investments are mainly made in Pounds Sterling. The assets are placed on term deposit. Investments may be made with banks and building societies which satisfy certain criteria as to their financial standing.

### Investments

Investments were made by the 1971 Fund and the 1992 Fund during 2006 with a number of banks and one building society. As at 31 December 2006 the portfolios of investments totalled some £11.5 million for the 1971 Fund and £89.8 million for the 1992 Fund. Interest due in 2006 on the investments amounted to £517 000 for the 1971 Fund and £4.6 million for the 1992 Fund.

### Investment Advisory Body

The 1971 Fund, the 1992 Fund and the Supplementary Fund have a joint Investment Advisory Body, consisting of three experts with specialist knowledge in investment matters, to advise the Director in general terms on such matters. The members of the Body are elected by the 1992 Fund Assembly.

During 2006 the Investment Advisory Body monitored the relevant procedures for investment and cash management controls. It also monitored the credit ratings of financial institutions and reviewed on a continuing basis the list of such institutions which meet the Funds' investment criteria. In addition, the Body regularly reviewed the Funds' investment and foreign exchange requirements and the quotations for investments in order to ensure that reasonable investment returns were achieved without compromising the Funds' assets.

The Investment Advisory Body reports annually to the governing bodies.

## 8.7 Audit Body

The 1971 Fund, the 1992 Fund and the Supplementary Fund have a joint Audit Body, the members of which are elected by the 1992 Fund Assembly. The Audit Body has the following mandate:

(a) to review the effectiveness of the Organisations regarding key issues of financial reporting, internal controls, operational procedures and risk management;

(b) to promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss internal control issues, operational procedures and matters raised by the external audit;

(c) to discuss with the External Auditor the nature and scope of each forthcoming audit;

(d) to review the Organisations' financial statements and reports;

(e) to consider all relevant reports by the External Auditor, including reports on the Organisations' financial statements; and

(f) to make appropriate recommendations to the governing bodies.

During 2006 the Audit Body met with representatives of the External Auditor and received a detailed report of the work carried out by the auditor and the auditor's findings, all of which were considered satisfactory. The Audit Body was satisfied that the extent of the audit examination was appropriate. Liaison with the Investment Advisory Body continued. The Audit Body recommended that the governing bodies should approve the accounts for the financial year 2005.

In its report to the governing bodies, the Audit Body, although noting that some progress had been made in the submission of oil reports by States, reiterated its great concern that a number of States did not fulfill their treaty obligations to submit these reports, since without oil reports the contribution system could not work on an equitable basis (see Section 9.1).

The Audit Body continued to monitor the risk management process which had been established by the Secretariat and was pleased to note the progress that had been made.

In 2005 the Audit Body conducted a review of the claims settlement procedures in order to enable the Body to form a view about the efficiency of those procedures. The report on the review was presented to the governing bodies in October 2005. As a follow-up to this review, the Audit Body decided that it would be useful to carry out a study to ascertain the level of satisfaction of claimants. A recent incident in the Republic of Korea was chosen as a basis for the initial trial of a questionnaire. The Audit Body intends to present an analysis of the results of this questionnaire as well as possible recommendations for the handling of future incidents to a future session of the 1992 Fund Assembly.

# 9 CONTRIBUTIONS

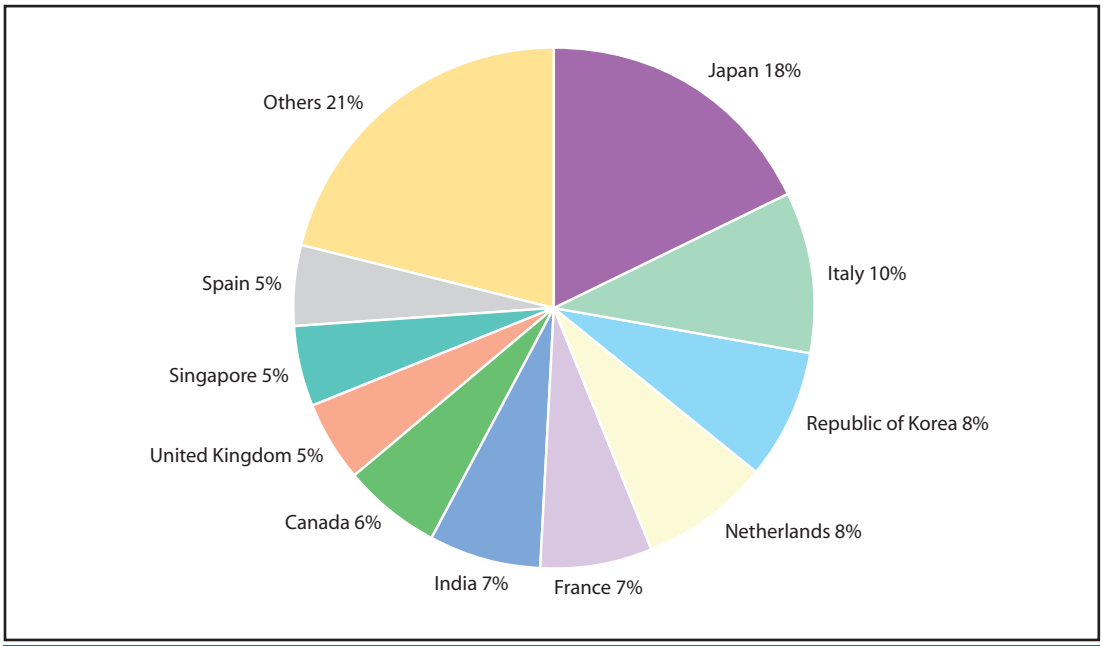
## 9.1 The contribution system

### Basis for levy of contributions

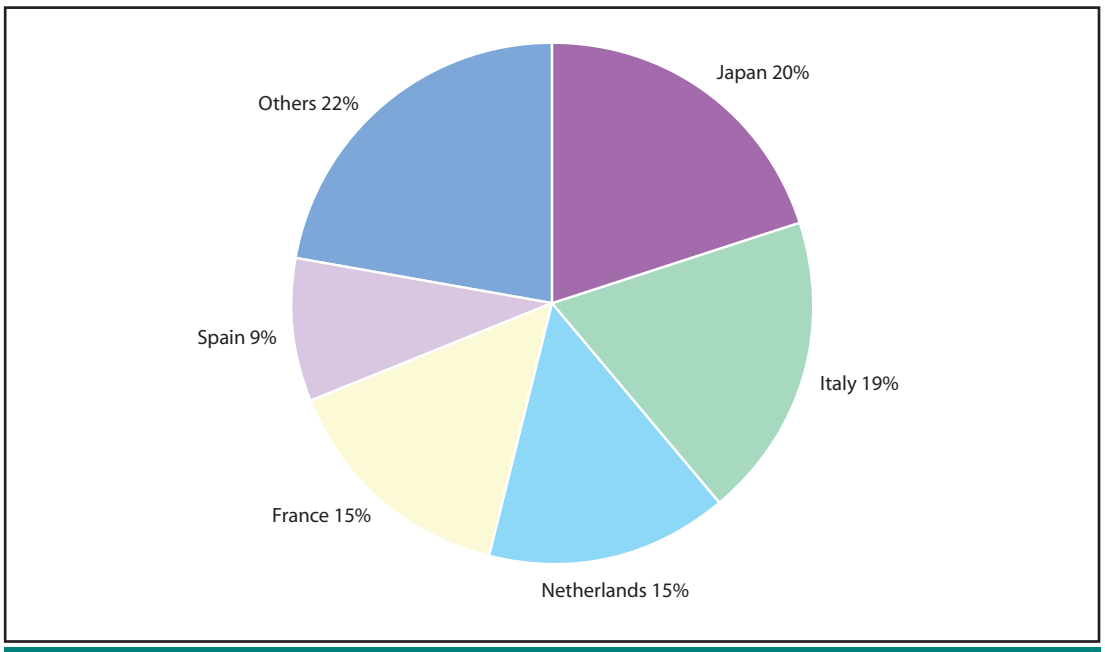
The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors (oil reports) which are submitted to the Fund Secretariat by the Governments of Member States. Contributions are paid by the individual contributors directly to the IOPC Funds. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility.

However, as regards the Supplementary Fund for the purpose of contributions at least 1 million tonnes of contributing oil will be deemed to have been received each calendar year in each Member State of that Fund. If the aggregate quantity of contributing oil received in a Member State is less than 1 million tonnes, that Member State will be liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 million tonnes and the aggregate quantity of actual contributing oil receipts in respect of that State.

The Supplementary Fund Protocol contains provisions for so-called 'capping' of contributions, ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular State during a calendar year should not exceed 20% of the total amount of contributions of each levy. The result of the capping system is that if the total contributions for all contributors in any one Member State of the Supplementary Fund in respect of a General Fund levy or a levy to a Claims Fund exceed 20% of the total amount of that particular levy, then the levies for contributors in that State will be reduced proportionally so that they together equal 20% of the total levy. The total amount deducted for contributors in the 'capped State' will be borne by all other contributors to the Fund in question by way of a capping levy. The capping provisions apply until the total amount of contributing oil received in the States which are Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol, whichever is the earlier.




*1992 Fund: General Fund contributions 2005*




*Supplementary Fund: General Fund contributions 2005*

## Non-submission of oil reports

The non-submission of oil reports by a number of States was again considered at the October 2006 sessions of the governing bodies of the three Funds. At that time a total of 31 States had outstanding oil reports for both the 1971 Fund and/or the 1992 Fund. A number of States had outstanding oil reports for several years. Oil reports were outstanding for between four and ten years in respect of ten States. Twelve States had not submitted oil reports since joining the respective Fund. Nevertheless, the total number of outstanding reports had fallen from 111 in September 2005 to 93 in October 2006, which corresponds to a decrease of 16%. There were no outstanding oil reports as regards the Supplementary Fund.

The governing bodies noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory. The governing bodies expressed their very serious concern as regards the number of Member States which had not fulfilled their obligation to submit oil reports, since the submission of these reports was crucial to the functioning of the IOPC Funds. The Audit Body also expressed its great concern in this regard (see Section 8.7).

The 1971 Fund Administrative Council and the 1992 Fund Assembly instructed the Director to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their treaty obligations in this regard.

The former 1971 Fund Member States with outstanding oil reports are listed on the IOPC Funds' website as decided by the 1971 Fund Administrative Council in October 2005.

In view of the fact that the non-submission of oil reports had been a recurring problem for both the 1971 Fund and the 1992 Fund, it was decided when the Supplementary Fund Protocol was drafted to insert provisions in the Protocol under which compensation would be denied temporarily or permanently in respect of pollution damage in States that failed to fulfil their obligation to submit oil reports. The Supplementary Fund Assembly decided in March 2005 that it would be for it to determine whether compensation should be denied.

### Levy of contributions

If required, contributions are levied annually by the governing bodies of each Fund to meet the anticipated payments of compensation and the estimated administrative expenses during the forthcoming year.

### Deferred invoicing

The three Funds operate a deferred invoicing system. Under this system the Assembly or Administrative Council fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

## 9.2 Contribution levies/ reimbursements

### 1971 Fund

It is no longer possible to levy contributions to the 1971 Fund's General Fund.

**2005 and 2006 contributions**

In October 2005 and October 2006, the 1971 Fund Administrative Council decided that there should be no levy of 2005 contributions in respect of the three remaining Major Claims Funds, ie the *Vistabella*, *Nissos Amorgos* and *Pontoon 300*.

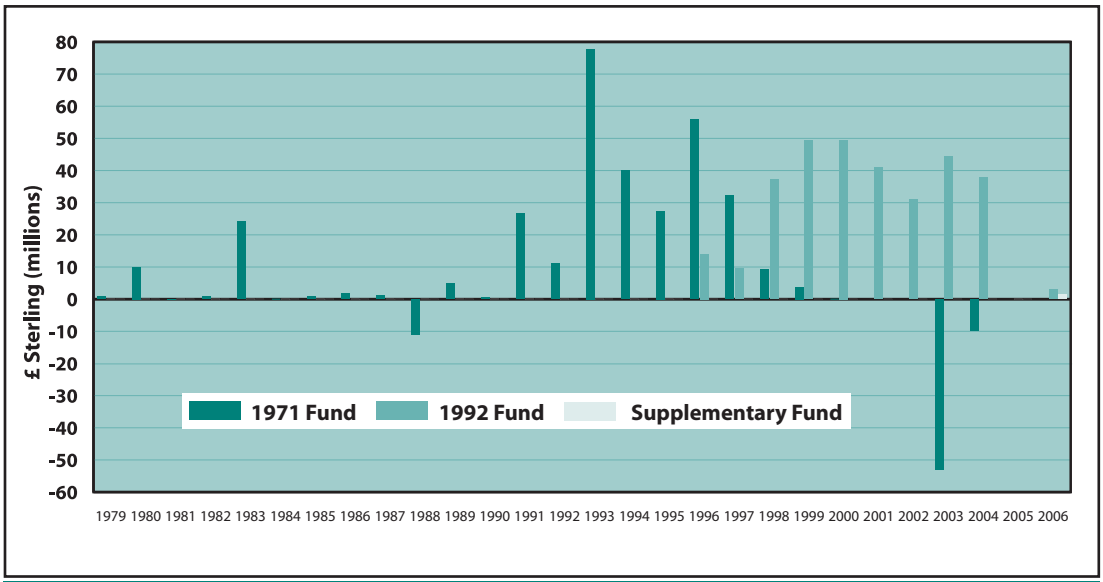
### 1992 Fund

**2005 contributions**

The 1992 Fund Assembly decided in October 2005 that there should be no levy of 2005 contributions to the General Fund. It also decided to raise 2005 contributions to the *Erika* and *Prestige* Major Claims Funds of £2 million and £3.5 million respectively, but that the entire levies should be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levies for payment during the second half of 2006, if and to the extent required. In June 2006 the Director decided not to issue any invoices for the deferred levies.

**2006 contributions**

The 1992 Fund Assembly decided to levy 2006 contributions of £3 million to the General Fund of the 1992 Fund due for payment by 1 March 2007. It also decided that there should be no levy of 2006 contributions to the *Erika* and *Prestige* Major Claims Funds.




*1971 Fund and 1992 Fund: annual contributions over the years*

**IOPC FUNDS' 2005 AND 2006 ANNUAL CONTRIBUTIONS**

| Organisation | Annual contribution year | Decision of governing body | | General Fund/Major Claims Fund | Total amount due £ | Oil year | Levy per tonne £ |
|---|---|---|---|---|---|---|---|
| **1971 FUND** | 2005 | October 2005 | No levy | | 0 | | |
| | 2006 | October 2006 | No levy | | 0 | | |
| **1992 FUND** | 2005 | October 2005 | No levy | General Fund | 0 | | |
| | | | Deferred levy (not invoiced) | *Erika*, France | 2 000 000 | 1998 | 0.0017919 |
| | | | | *Prestige*, Spain | 3 500 000 | 2001 | 0.0025770 |
| | | October 2006 | Due 1 March 2007 | General Fund | 3 000 000 | 2005 | 0.0020156 |
| **SUPPLE-MENTARY FUND** | 2005 | October 2005 | No levy | | 0 | | |
| | 2006 | October 2006 | Due 1 March 2007 | General Fund | 1 400 000 | 2005 | 0.0010889 (contributors in Japan)<br>0.0020154 (other contributors) |

## Supplementary Fund

**2005 contributions**

The 1992 Fund Assembly had agreed to continue to provide the Supplementary Fund with loans, repayable with interest, to cover its administrative costs. The Supplementary Fund Assembly therefore decided in October 2005 to postpone the first levy of contributions to the General Fund until the autumn of 2006. It also decided that, since there had been no incidents which would or might require that Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

**2006 contributions**

The Supplementary Fund Assembly decided in October 2006 to levy 2006 contributions of £1.4 million to the General Fund, due for payment by 1 March 2007. This amount included a working capital of £1 million and an amount to be repaid to the 1992 Fund for payments made on behalf of the Supplementary Fund. The Assembly also decided that, since there had been no incidents which would or might require that Fund to pay compensation, there was no need for contributions to be levied to any Claims Fund.

The Supplementary Fund Protocol introduced a system for 'capping' contributions for a certain period, as set out in Section 9.1. The 2006 contributions to the General Fund were capped as regards contributors in Japan.

## 9.3 Contributions over the years

Details of the IOPC Funds' 2005 and 2006 contributions are set out in the table above. The

payments made by the 1971 and 1992 Funds in respect of claims for compensation for oil pollution damage have varied considerably from year to year. As a result, the level of contributions to the Funds has fluctuated from one year to another, as illustrated in the graph on page 41.

The total amount levied over the years is £386 million for the 1971 Fund, £359 million for the 1992 Fund and £1.4 million for the Supplementary Fund. Reimbursements totalling £117 million and £42 million have been made to contributors to the 1971 Fund and 1992 Fund respectively. With regard to contributions levied by the 1971 Fund over the years, £328 558 was outstanding as at 31 December 2006. As for contributions levied by the 1992 Fund over the years, £328 916 was outstanding as at that date. The arrears represent 0.08% and 0.09% respectively of the net amounts levied. The first levy of contributions to the Supplementary Fund of £1.4 million is not due until 1 March 2007.

# 10 STOPIA 2006 AND TOPIA 2006

## 10.1 Consideration of a possible review of the 1992 Conventions

In 2000 the 1992 Fund Assembly established an intersessional Working Group to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention. The Working Group also prepared *inter alia* the text of the Supplementary Fund Protocol.

Having considered the Working Group's final report at its October 2005 session, the 1992 Fund Assembly decided, in light of the fact that there was insufficient support for a revision of the 1992 Conventions, that the Working Group should be disbanded and that the revision should be removed from the Assembly's agenda. In this regard, reference is made to the 2005 Annual Report (Section 7).

## 10.2 Development of voluntary industry agreements

In order to address the imbalance in the sharing of the financial burden created by the establishment of the Supplementary Fund, funded by oil receivers in States that became parties to the Supplementary Fund Protocol, the International Group of P&I Clubs created, in 2005, a voluntary, but legally binding, agreement known as the 'Small Tanker Oil Pollution Indemnification Agreement' (STOPIA) whereby shipowners and P&I Clubs undertook to indemnify the 1992 Fund in respect of all claims up to 20 million SDR where the limitation amount under the 1992 Civil Liability Convention was lower, namely for ships of 29 548 tonnage or less, to the effect that the maximum amount payable by the owners of such ships would be 20 million SDR. Although STOPIA would only apply to pollution damage in States that were parties to the Supplementary Fund Protocol, it would operate irrespective of whether or not the Supplementary Fund paid any compensation.

The International Group had also prepared a proposal establishing the 'Tanker Oil Pollution Indemnification Agreement' (TOPIA) whereby the Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by the Supplementary Fund.

In October 2005 the International Group made an offer whereby if the decision to revise the Conventions were to be put on hold, the Clubs would be prepared to extend STOPIA to all States parties to the 1992 Civil Liability Convention and to apply TOPIA to States parties to the Supplementary Fund Protocol.

At the Assembly's October 2005 session the Director was instructed to collaborate with the International Group, acting on behalf of the shipping industry, and the Oil Companies International Marine Forum (OCIMF) before the voluntary agreement package was submitted to the Assembly for consideration and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable.

The Director held meetings in December 2005 and January 2006 with the International Group and OCIMF concerning the development of a voluntary package. The International Group discussed the issues involved with the International Chamber of Shipping (ICS) and the International Association of Independent Tanker Owners (INTERTANKO). As a result of these discussions, the International Group developed a revised STOPIA, to be referred to as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, and a second agreement, the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006. The texts of STOPIA 2006 and TOPIA 2006 were supported by ICS, INTERTANKO and OCIMF as presented.

## 10.3 Overview of the voluntary agreements

### STOPIA 2006

STOPIA 2006, which applies to pollution damage in States for which the 1992 Fund

Convention is in force, is a contract between owners of small tankers to increase, on a voluntary basis, the limitation amount applicable to the tanker under the 1992 Civil Liability Convention. The contract applies to all small tankers entered in one of the P&I Clubs which are members of the International Group and reinsured through the pooling arrangements of the International Group. Ships insured by an International Group Club but not covered by the pooling arrangement may agree with the Club concerned to be covered by STOPIA 2006. Certain Japanese coastal tankers have agreed to be bound in this way. The effect of STOPIA 2006 is that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less is 20 million SDR. The 1992 Fund is not a party to the agreement, but the agreement confers legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

In respect of ships covered by STOPIA 2006, the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. If the incident involves a ship to which STOPIA 2006 applies, the 1992 Fund is entitled to indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR or the total amount of the established claims, whichever is the less.

### TOPIA 2006

TOPIA 2006 applies to all tankers entered in one of the P&I Clubs which are members of the International Group and reinsured through the pooling arrangements of the Group.

In respect of incidents covered by TOPIA 2006, the Supplementary Fund will continue to be liable to compensate claimants as provided in the Supplementary Fund Protocol. If the incident involves a ship to which TOPIA 2006 applies, the Supplementary Fund is entitled to indemnification by the shipowner of 50% of the compensation payment it had made to claimants.

### The review process

STOPIA 2006 and TOPIA 2006 provide that a review shall be carried out in 2016 of the experience of pollution damage claims during the 10-year-period from 20 February 2006, and thereafter at five-yearly intervals, in consultation with representatives of oil receivers and the 1992 Fund and the Supplementary Fund, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne respectively by shipowners and by oil receivers. The review would also consider the efficiency, operation and performance of the agreements. The agreements also provide that, if the review reveals that either shipowners or oil receivers have borne a proportion exceeding 60% of the overall costs of such claims, measures shall be taken for the purpose of maintaining an approximately equal apportionment. Examples of such measures are given in the agreements.

### Entry into force and termination

STOPIA 2006 and TOPIA 2006 entered into force on 20 February 2006. The agreements are to continue until the current international compensation system is materially and significantly changed. There are also provisions for the termination of the agreements in certain circumstances which may be expected to make them no longer workable.

## 10.4 Consideration by the Assemblies of the 1992 Fund and the Supplementary Fund

At their February/March 2006 sessions the 1992 Fund Assembly and the Supplementary Fund Assembly took note of the voluntary agreements STOPIA 2006 and TOPIA 2006.

The International Group informed the 1992 Fund Assembly that the P&I Clubs were prepared to extend STOPIA 2006 to apply not only to 1992 Fund Member States but also to those parties to the 1992 Civil Liability Convention which were not Members of the 1992 Fund. The International Group had doubts, however, as to whether such an extension was appropriate. When the 1992 Fund Assembly considered the issue in February/March 2006,

there was no support for such an extension of STOPIA 2006, since it was felt that this would act as a disincentive to those States to ratify the 1992 Fund Convention.

## 10.5 Implementation of STOPIA 2006 and TOPIA 2006

Discussions were held between the Director and the International Group of P&I Clubs concerning the procedures required to implement the payment provisions in STOPIA 2006 and TOPIA 2006. The text of a note on these procedures was approved by the 1992 Fund Assembly and the Supplementary Fund Assembly in October 2006 (see Section 5).

# 11 PREPARATIONS FOR THE ENTRY INTO FORCE OF THE HNS CONVENTION

In 1996 a Diplomatic Conference adopted the International Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention). The Conference invited the Assembly of the 1992 Fund to assign to the Director of the 1992 Fund, in addition to his functions under the 1992 Fund Convention, the administrative tasks necessary for setting up the International Hazardous and Noxious Substances Fund (HNS Fund) in accordance with the HNS Convention. In 1996 the 1992 Fund Assembly instructed the Director to carry out the tasks requested by the HNS Conference on the basis that all expenses incurred would be repaid by the HNS Fund.

The HNS Convention will enter into force 18 months after ratification by at least 12 States, subject to two conditions, namely that four of those States must have ships with a total of at least 2 million units of gross tonnage and that in the previous calendar year a total of at least 40 million tonnes of cargo consisting of hazardous and noxious substances other than oils, liquefied natural gas (LNG) or liquefied petroleum gas (LPG) had been received in States which have ratified the Convention.

By 31 December 2006 eight States (Angola, Cyprus, Morocco, the Russian Federation, Saint Kitts and Nevis, Samoa, Slovenia and Tonga) had acceded to the HNS Convention. As only two of those States have ships with a total of at least 2 million units of gross tonnage (Cyprus and the Russian Federation) and only two States (Cyprus and Slovenia) have submitted reports on contributing cargo, the conditions for the entry into force of the HNS Convention are far from being fulfilled.

The IOPC Funds' Secretariat has established a website dedicated to the implementation of the HNS Convention (www.hnsconvention.org).

The Secretariat has also completed the development of a system to monitor contributing cargo under the HNS Convention, which includes a database of all substances qualifying as hazardous or noxious substances (HNS). The final system was circulated in August 2005 in the form of a CD-ROM containing software for installation on a user's personal computer. The Secretariat has developed a dedicated website for the system (www.hnscccc.org).

In October 2005, the 1992 Fund Assembly's attention was drawn to the fact that revised regulations to prevent marine pollution by ships carrying oil or chemicals had been adopted by IMO's Marine Environment Protection Committee (MEPC) in October 2004 which were expected to enter into force on 1 January 2007. The entry into force of these revised regulations would render the part of the definition of HNS under (a) (ii) of Article 1.5 of the HNS Convention meaningless from that date, in the sense that Appendix II of Annex II to MARPOL 73/78, to which this part of the definition refers, will no longer exist.

The 1992 Fund Assembly therefore considered that it was essential that, in order to facilitate the entry into force of the HNS Convention, this issue be resolved as quickly as possible, and instructed the Director to discuss this issue with the Secretary-General of IMO with the aim of finding a practical solution to the issue and also of attempting to avoid similar issues arising in the future. As a result of these discussions, the Secretary-General of IMO issued a circular letter in February 2006, clarifying the issue and indicating that explanatory footnotes would be added in new IMO publications where appropriate. Furthermore, at its April 2006 session the Legal Committee adopted resolution LEG.4(91) on this issue, which refers interested parties to the relevant

equivalent provisions in the new Annex II to MARPOL 73/78. At its October 2006 session, noting that it had become clear that the revised regulations would enter into force on 1 January 2007, IMO's Marine Environment Protection Committee adopted a similar resolution. It is expected that the first Assembly of the HNS Fund will adopt an appropriate resolution on this matter.

As a follow-up to the first Workshop held in June 2005, the IOPC Funds' Secretariat organised a second Workshop in London on 25 and 26 May 2006 to facilitate States' preparations for ratification of the HNS Convention. This second Workshop focused on more practical aspects of the implementation of the HNS Convention, building on the revised 'Guide to the Implementation of the HNS Convention' which had been developed for the first Workshop held in 2005. The Guide, together with the Powerpoint presentations given at both workshops, are available on the website dedicated to the implementation of the HNS Convention.

In 2006 the Secretariat participated in several seminars and similar events on the HNS Convention for those States considering the ratification of the Convention. The Secretariat also made presentations on the HNS Convention at seminars organised by the European Maritime Safety Agency.

A four-page brochure providing an accessible introduction to the HNS Convention has been published in English, French and Spanish and is available from the IOPC Funds.

*A drum containing a hazardous and noxious substance washed up on a sandy beach*

# 12 SETTLEMENT OF CLAIMS

## 12.1 General

The governing bodies of the IOPC Funds have given general authority to the Director to settle claims and pay compensation if it is unlikely that the total payments by the respective Fund with regard to the incident in question will exceed 2.5 million SDR (£1.9 million). For incidents leading to larger claims, the Director needs in principle approval of the settlement by the governing body of the Fund in question (ie the Administrative Council of the 1971 Fund, the Executive Committee of the 1992 Fund or the Assembly of the Supplementary Fund). However, the governing bodies normally give the Director very extensive authority to settle claims by authorising him to make binding settlement of all claims arising from a particular incident, except where a specific claim gives rise to a question of principle which has not previously been decided by the governing bodies. The Director is permitted, in certain circumstances and within certain limits, to make provisional payment of compensation before a claim is settled, if this is necessary to mitigate undue financial hardship to victims of pollution incidents. These procedures are designed to expedite the payment of compensation.

Difficulties have arisen in some incidents involving the 1971 Fund and the 1992 Fund where the total amount of the claims arising from a given incident has exceeded the total amount available for compensation or where there was a risk that this might occur. Under the Fund Conventions, the Funds are obliged to ensure that all claimants are given equal treatment. The Funds have to strike a balance between the importance of paying compensation to victims as promptly as possible and the need to avoid an over-payment situation. In a number of cases the Funds have therefore had to limit payments to victims to a percentage of the agreed amount of their claims (so called 'pro-rating'). In most cases it eventually became possible to increase the level of payments to 100% once it was established that the total amount of admissible claims would not exceed the amount available for compensation.

One important effect of the establishment of the Supplementary Fund is that, in practically all cases, it should be possible from the outset to pay compensation for pollution damage in Supplementary Fund Member States at 100% of the amount of damage agreed between the Fund and the claimant. There will therefore be no need to pro-rate payments during the early stages of an incident.

## 12.2 Admissibility of claims for compensation

The Funds can pay compensation to claimants only to the extent that their claims are justified and meet the criteria laid down in the applicable Fund Convention. To this end, claimants are required to support their claims by producing explanatory notes, invoices, receipts and other documents.

For a claim to be accepted by the Funds, the claim must be based on an expense actually incurred or a loss actually suffered and there must be a causal link between the expense or loss and the contamination. Any expense should have been incurred for reasonable purposes.

The IOPC Funds have acquired considerable experience with regard to the admissibility of claims. In connection with the settlement of claims they have developed certain principles as regards the meaning of the definition of 'pollution damage', which is specified as 'damage caused by contamination'. In 1994 a Working Group of the 1971 Fund developed and codified the criteria for the admissibility of claims for compensation within the scope of the 1969 Civil Liability Convention, the 1971 Fund Convention and the 1992 Conventions. The Report of the Working Group was endorsed by the 1971 Fund Assembly. The 1992 Fund Assembly has decided that this Report should form the basis of its policy on the criteria for the admissibility of claims.

The Assemblies of the three Funds have expressed the opinion that a uniform interpretation of the definition of 'pollution damage' is essential for the functioning of the compensation regime established by the Conventions. The IOPC Funds' position in this regard applies not only to questions of principle relating to the admissibility

| Ship | Place of incident | Year | 1971 Fund payments |
|---|---|---|---|
| *Antonio Gramsci* | Sweden | 1979 | £9.2 million |
| *Tanio* | France | 1980 | £18.7 million |
| *Ondina* | Federal Republic of Germany | 1982 | £3 million |
| *Thuntank 5* | Sweden | 1986 | £2.4 million |
| *Rio Orinoco* | Canada | 1990 | £6.2 million |
| *Haven* | Italy | 1991 | £30.3 million |
| *Aegean Sea* | Spain | 1992 | £34.1 million |
| *Braer* | United Kingdom | 1993 | £45.7 million |
| *Taiko Maru* | Japan | 1993 | £7.2 million |
| *Keumdong N°5* | Republic of Korea | 1993 | £11 million |
| *Toyotaka Maru* | Japan | 1994 | £5.1 million |
| *Sea Prince* | Republic of Korea | 1995 | £21.1 million |
| *Yuil N°1* | Republic of Korea | 1995 | £15.9 million |
| *Senyo Maru* | Japan | 1995 | £2.3 million |
| *Sea Empress* | United Kingdom | 1996 | £31.2 million |
| *Nakhodka*[2] | Japan | 1997 | £49.6 million |
| *Nissos Amorgos*[3] | Venezuela | 1997 | £11 million |
| *Osung N°3* | Republic of Korea/Japan | 1997 | £8.2 million |

of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle.

At its May 2003 session the 1992 Fund Administrative Council, acting on behalf of the Assembly, adopted a Resolution on the interpretation and application of the 1992 Civil Liability Convention and the 1992 Fund Convention (1992 Fund Resolution N°8). The Resolution drew attention to the importance for the proper and equitable functioning of the regime established by the 1992 Conventions, of these Conventions being implemented and applied uniformly in all States Parties and of claimants for oil pollution damage being given equal treatment as regards compensation in all States Parties. The Resolution also emphasised the importance of national courts in States Parties giving due consideration to the decisions by the governing bodies of the 1971 and 1992 Funds on the interpretation and application of the 1992 Conventions.

The Funds consider each claim on the basis of its own merits, in the light of the particular circumstances of the case. Whilst criteria for the admissibility of claims have been adopted, a certain flexibility is nevertheless allowed, enabling the Funds to take into account new situations and new types of claims. Generally the Funds follow a pragmatic approach, so as to facilitate out-of-court settlements.

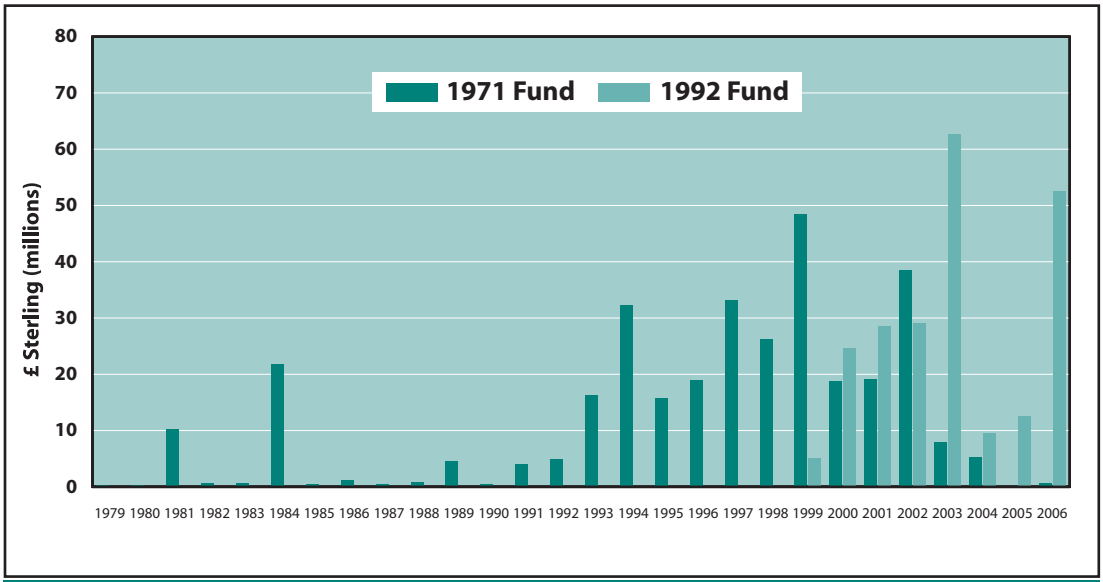
The 1971 and 1992 Funds have published Claims Manuals containing general information on how claims should be presented and set out the general criteria for the admissibility of various types of claims. A revised version of the 1992 Fund's Claims Manual adopted by the 1992 Fund Assembly was published in English, French and Spanish in April 2005.

The Supplementary Fund will not normally become directly involved in the claims-handling process. The 1992 Fund's Manual includes a statement that the criteria under which claims qualify for compensation from the Supplementary Fund are identical to those of the 1992 Fund. In the light of the provisions of the Supplementary Fund Protocol, and for practical reasons, the Supplementary Fund Assembly decided in March 2005 that the Supplementary Fund did not need its own Claims Manual.



[2] *The 1992 Fund has paid a further £61.1 million in compensation in respect of the* Nakhodka *incident.*

[3] *Some third party claims are pending.*




*1971 Fund and 1992 Fund: payment of claims*

The Claims Manual is available on the Funds' website (www.iopcfund.org).

## 12.3 Incidents involving the 1971 Fund

### 1971 Fund claims settlements 1978–2006

Since its establishment in October 1978, the 1971 Fund has, up to 31 December 2006, been involved in the settlement of claims arising out of 100 incidents. The total compensation paid by the 1971 Fund amounts to £329 million (US$631 million).

Annex XXII to this Report contains a summary of all incidents for which the 1971 Fund has paid compensation or indemnification, or where it is possible that such payments may be made by the Fund. It also includes some incidents in which the 1971 Fund was involved but ultimately was not called upon to make any payments.

There has been a considerable increase in the amounts of compensation claimed from the 1971 Fund over the years. In several cases the total amount of the claims submitted greatly exceeded the maximum amount available under the 1971 Fund Convention. In some cases claims have been presented which in the 1971 Fund's view do not fall within the definition of pollution damage laid down in the Conventions. There have also been many claims which, although admissible in principle, were for amounts which the Fund considered greatly exaggerated. As a result, the 1971 Fund and claimants have become involved in lengthy legal proceedings in respect of some incidents.

Listed on page 50 are the incidents in respect of which the 1971 Fund has made payments of compensation and indemnification of over £2 million.

### Incidents with outstanding claims against the 1971 Fund

As at 31 December 2006 there were outstanding third party claims in respect of eight incidents involving the 1971 Fund which had occurred before 24 May 2002, the date when the 1971 Fund Convention ceased to be in force. The situation in respect of the two major incidents is summarised below.

In respect of the *Nissos Amorgos* incident (Venezuela, 1997), claims have so far been agreed for a total of US$24.4 million

(£13 million) and Bs 350 million (£53 000). All settled claims have been paid in full. Claims for significant amounts have been lodged in the Venezuelan courts.

As regards the *Pontoon 300* incident (United Arab Emirates, 1998), all admissible claims have been settled for a total of Dhs 7.9 million (£1.2 million). The 1971 Fund has made payments of £1 million, which in respect of most claims corresponds to 75% of the settlement amounts. In December 2006 the 1971 Fund increased the level of payments to 100% of the settlement amounts, and the outstanding amounts will be paid in early 2007.

## 12.4 Incidents involving the 1992 Fund

### 1992 Fund claims settlements 1996–2006

Since its creation in May 1996 there have been 31 incidents involving the 1992 Fund. The total compensation paid by the 1992 Fund amounts to £224.6 million (US$439.6 million).

Listed below are the incidents in respect of which the 1992 Fund has made compensation payments of over £2 million:

| Ship | Place of incident | Year | 1992 Fund payments |
|---|---|---|---|
| *Nakhodka*[4] | Japan | 1997 | £61.1 million |
| *Erika* | France | 1999 | £75.9 million |
| *Prestige* | Spain | 2002 | £81.2 million |

### Incidents in previous years with outstanding claims against the 1992 Fund

As at 31 December 2006 there were five incidents which occurred before 2006 and which have given or may give rise to claims against the 1992 Fund. The most important of these are the *Erika* (France, 1999) and *Prestige* (Spain, 2002) incidents, both of which resulted in claims for compensation greatly exceeding the maximum amount available under the 1992 Conventions.

The French Government and the French oil company Total SA have undertaken to pursue claims for compensation in respect of the *Erika* incident only if and to the extent that all other claims have been paid in full. Compensation payments totalling £84.5 million have been made in respect of 5 665 claims arising from this incident.

The *Prestige* incident has given rise to claims for compensation for very high amounts in Spain. Claims for substantial amounts have been submitted in France. The Portuguese authorities have also submitted claims. Compensation totalling £78.4 million has been paid to the Spanish Government and £222 600 to the Portuguese Government. A further £3.2 million has been paid to private claimants in Spain and France.

### Incidents in 2006 involving the 1992 Fund

During 2006 the 1992 Fund became involved in a new incident in the Philippines (the *Solar 1* incident) and a new incident in Japan (the *Shosei Maru* incident), which may give rise to claims against the 1992 Fund.

The *Solar 1* incident has had a significant impact on small-scale fisheries and aquaculture as well as on small-scale tourism businesses. The amount of the admissible claims will exceed the limitation amount under the 1992 Civil Liability Convention. The incident falls under the STOPIA 2006 agreement (see Section 10) and the amounts paid in compensation by the Fund will be reimbursed by the shipowner's P&I insurer up to a total of 20 million SDR (£15.4 million). The shipowner's insurer, however, informed the 1992 Fund that it intended to reserve its right, under Article III.3 of that Convention, to oppose claims from claimants whose negligence may have caused or contributed to the pollution damage, and that it did not intend to pay claims made by third parties where it saw evidence of contributory negligence.



[4] *As mentioned above, the 1971 Fund has paid a further £49.6 million in compensation in respect of the* Nakhodka *incident.*

It is understood that claims from such third parties are only likely to be in respect of preventive measures. In accordance with Article 4.3 of the 1992 Fund Convention, the 1992 Fund would however be liable to pay any claims for reasonable costs of preventive measures made by third parties even where the negligence of such parties may have caused or contributed to the pollution damage. Payments made by the Fund in respect of such claims, would not, or at least not for the time being, be reimbursed by the shipowner's insurer under the terms of STOPIA 2006.

The *Shosei Maru* incident in Japan affected a number of vessels and port installations and some seaweed cultivation farms. This incident is not covered by Stopia 2006. The total amount of admissible claims may exceed the limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention. It is possible therefore that the 1992 Fund will be required to pay compensation in respect of this incident.

# PART 2

# 13 INCIDENTS DEALT WITH BY THE 1971 AND 1992 FUNDS DURING 2006

This part of the Report provides information on incidents in which the IOPC Funds have been involved in 2006. The Report sets out the developments in the various cases during 2006 and the position taken by the governing bodies in respect of claims. The Report is not intended to reflect in full the discussions of the governing bodies. These discussions are reflected in the Records of Decisions of the meetings of these bodies, which are available on the IOPC Funds' website (www.iopcfund.org).

The Supplementary Fund has not been involved in any incident during 2006.

Claim amounts have been rounded in this Report. The conversion of foreign currencies into Pounds Sterling is as at 29 December 2006, except in the case of claims paid by the 1971 Fund or the 1992 Fund where conversions have been made at the rate of exchange on the date when the currency was purchased.

Figures in the Report relating to claims, settlements and payments are given for the purpose of providing an overview of the situation for various incidents and may not correspond exactly to the figures given in the Funds' financial statements.

*Oiled fishing boats on Guimaras Island, the Philippines, following the Solar 1 incident*

# 14 1971 FUND INCIDENTS

## 14.1 VISTABELLA

*(Caribbean, 7 March 1991)*

### The incident

While being towed, the sea-going barge *Vistabella* (1 090 GRT), registered in Trinidad and Tobago, sank to a depth of over 600 metres, 24 nautical miles south-east of Nevis. An unknown quantity of heavy fuel oil cargo was spilled as a result of the incident, and the quantity that remained in the barge is not known.

The *Vistabella* was not insured by any P&I Club but was covered by third party liability insurance with a Trinidad insurance company. The insurer argued that the insurance did not cover this incident. The limitation amount applicable to the ship was estimated at FFr2 354 000 or €359 000 (£242 000). No limitation fund was established. The shipowner and his insurer did not respond to invitations to co-operate in the claims-settlement procedure.

### Claims for compensation

The 1971 Fund paid compensation amounting to FFr8.2 million or €1.3 million (£890 000) to the French Government in respect of clean-up operations. Compensation was paid to private claimants in St Barthélemy and the British Virgin Islands and to the authorities of the British Virgin Islands for a total of some £14 250.

### Legal proceedings

The French Government brought legal action against the owner of the *Vistabella* and his insurer in the Court of first instance in Basse-Terre (Guadeloupe), claiming compensation for clean-up operations carried out by the French Navy. The 1971 Fund intervened in the proceedings and acquired by subrogation the French Government's claim. The French Government subsequently withdrew from the proceedings.

In a judgement rendered in 1996 the Court of first instance accepted that, on the basis of subrogation, the 1971 Fund had a right of action against the shipowner and a right of direct action against his insurer and awarded the Fund the right to recover the total amount which it had paid for damage caused in the French territories. The insurer appealed against the judgement.

The Court of Appeal rendered its judgement in March 1998. The Court of Appeal held that the 1969 Civil Liability Convention applied to the incident and that the Convention applied to the direct action by the 1971 Fund against the insurer even though in this particular case the shipowner had not been obliged to take out insurance since the ship was carrying less than 2 000 tonnes of oil in bulk as cargo. The case was referred back to the Court of first instance.

In a judgement rendered in March 2000 the Court of first instance ordered the insurer to pay FFr8.2 million or €1.3 million (£890 000) to the 1971 Fund plus interest. The insurer appealed against the judgement.

The Court of Appeal rendered its judgement in February 2004 in which it confirmed the judgement of the Court of first instance of March 2000. The insurer has not appealed to the Court of Cassation.

In consultation with the Fund's Trinidad and Tobago lawyers the Fund has commenced summary proceedings against the insurer in Trinidad and Tobago to enforce the judgement of the Court of Appeal.

## 14.2 AEGEAN SEA

*(Spain, 3 December 1992)*

### The incident

During heavy weather, the Greek oil bulk ore carrier (OBO) *Aegean Sea* (57 801 GRT) ran aground while approaching La Coruña harbour in north-west Spain. The ship, which was carrying approximately 80 000 tonnes of crude oil, broke in two and burnt fiercely for about 24 hours. The forward section sank some 50 metres from the coast. The stern section remained largely intact. The oil remaining in the aft section was removed by salvors working from

the shore. The quantity of oil spilled was not known, but most of the cargo was either consumed by the fire on board the vessel or dispersed in the sea. Several stretches of coastline east and north-east of La Coruña were contaminated, as well as the sheltered Ria de Ferrol. Extensive clean-up operations were carried out at sea and on shore.

## Claims for compensation

Claims totalling Pts 48 187 million (£195 million) were submitted before the criminal and civil courts. A large number of claims were settled out-of-court but many claimants pursued their claims in court.

## Criminal proceedings

Criminal proceedings were initiated in the Criminal Court of first instance in La Coruña against the master of the *Aegean Sea* and the pilot in charge of the ship's entry into the port. The Court considered not only the criminal aspects of the case but also the claims for compensation which had been presented in the criminal proceedings against the shipowner, the master, the shipowner's insurer the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (the UK Club), the 1971 Fund, the owner of the cargo on board the *Aegean Sea* and the pilot.

In a judgement rendered in April 1996 the Criminal Court held that the master and the pilot were both liable for criminal negligence. They were each sentenced to pay a fine of Pts 300 000 (£1 215). The master, the pilot and the Spanish State appealed against the judgement, but the Court of Appeal upheld the judgement in June 1997.

## Global settlement

In June 2001 the Administrative Council authorised the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained certain elements. In July 2001, the Director made the formal offer of such an agreement. This offer made the agreement conditional upon the withdrawal of the legal actions by claimants representing at least 90% of the total amount claimed in court.

On 17 October 2002 the Spanish Parliament adopted a Royal Decree ('Decreto-Ley') authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund. The Decree also authorised the Spanish Government to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions. By 30 October 2002 the Spanish Government had reached agreement with claimants representing over 90% of the principal of the loss or damage claimed. The conditions laid down in the 1971 Fund's offer were therefore fulfilled.

On 30 October 2002 an agreement was concluded between the Spanish State, the 1971 Fund, the shipowner and the UK Club whereby the total amount due from the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in La Coruña amounted to Pts 9 000 million (£36 million). As a consequence of the distribution of liabilities determined by the Court of Appeal in La Coruña, the Spanish State undertook to compensate all the victims who might obtain a final judgement by a Spanish court in their favour which condemned the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

On 1 November 2002, pursuant to the agreement, the 1971 Fund paid €38 386 172 corresponding to Pts 6 386 921 613 (£24.4 million) to the Spanish Government.

## Recent developments

Six claimants did not reach agreement with the Spanish Government on the amount of their alleged losses and pursued their claims in the Court of first instance in La Coruña against the Spanish State and the 1971 Fund for a total amount of €3 646 000 (£2.5 million). The 1971 Fund submitted pleadings to the Court to the effect that the 1971 Fund was not liable to

compensate these claimants since the Spanish Government had, in the above-mentioned agreement with the 1971 Fund, undertaken to compensate all the victims of the incident with outstanding claims and that this undertaking had been approved by a Royal Decree.

In October and December 2005, the Court rendered judgements in respect of three of the claims. In the judgements the Court rejected the argument of the 1971 Fund on the grounds that the Royal Decree did not exonerate the 1971 Fund from responsibility vis-à-vis the victims since it related to a contract between the 1971 Fund and the Spanish State. The Court also held that the Spanish State had not been authorised by the victims to reach agreement on their claims with third parties. The Court held that the Government and the Fund had joint liability to the claimants but awarded amounts considerably lower than those claimed. All parties appealed against the judgements. In July 2006 the Court ordered the provisional execution of the judgement issued in respect of one of these claimants.

In September 2006 the Court of Appeal in La Coruña issued a judgement in respect of one of the above-mentioned claims, reducing the amount awarded by the Court of first instance. The claimant appealed to the Supreme Court. Neither the Spanish State nor the Fund appealed against the new judgement.

In October and November 2006 the Court of first instance of La Coruña rendered judgements in respect of two of the other claims, largely on the same terms as for the three claims mentioned above, and awarded amounts lower than those claimed. The Spanish State, the 1971 Fund and one of the claimants appealed against the judgements.

The remaining claim is awaiting judgement.

The Spanish Government will, under the agreement with the 1971 Fund, pay any amounts awarded by these judgements.

## 14.3 BRAER

*(United Kingdom, 5 January 1993)*

### The incident

The Liberian tanker *Braer* (44 989 GRT) grounded south of the Shetland Islands (United Kingdom). The ship eventually broke up, and both the cargo and bunkers spilled into the sea. Due to the prevailing heavy weather, most of the spilt oil dispersed naturally, and the impact on the shoreline was limited. Oil spray blown ashore by strong winds affected farmland and houses close to the coast. The United Kingdom Government imposed a fishing exclusion zone covering an area along the west coast of Shetland which was affected by the oil, prohibiting the capture, harvest and sale of all fish and shellfish species from within the zone.

### Claims for compensation

All claims but one have been settled and the total compensation paid amounts to some £51.9 million, of which the 1971 Fund paid £45.7 million and the shipowner's insurer, Assuranceföreningen Skuld (Skuld Club), £6.2 million.

The only remaining claim, by Shetland Sea Farms Ltd, a Shetland-based company, related to a contract to purchase smolt from a company on the mainland. The Executive Committee decided in 1995 that in the assessment of the claim account should be taken of any benefits derived by other companies in the same group. Attempts to settle the claim out of court failed.

### Legal action by Shetland Sea Farms Ltd

The company took legal action against the shipowner, the Skuld Club and the 1971 Fund. The question arose as to whether certain of the documents relied upon by the claimant were genuine.

The Court of first instance rendered its decision in July 2001. Having heard the evidence the Court concluded that responsible officers of the claimant had knowingly presented copies of fake

letters in support of Shetland Sea Farms' claim for compensation. The Court held that these documents had been put forward with the intent to deceive the Claims Office established by the 1971 Fund and the Skuld Club into believing that Shetland Sea Farms' alleged contractual commitments were based on correspondence setting out the terms of the contracts. The Court also held that they did so as part of a scheme to further a substantial claim for compensation.

The Court then addressed the issue of whether as a result of this finding the claim should be refused without any further procedure. The Court acknowledged that it had an inherent power to dismiss the claim where a party was guilty of an abuse of process but stated that that was a drastic power. The Court resolved, however, that as Shetland Sea Farms was no longer going to base its claim on the false letters, the company should be given the opportunity to present a revised case and that not allowing the claim to proceed in its revised version would be an excessive punishment.

The Court decided that the case should proceed to a hearing restricted to the question of whether Shetland Sea Farms could prove that a contract existed before the *Braer* incident occurred for the supply of smolt to Shetland Sea Farms without reference to false letters and invoices. Hearings were held in April and September 2002 and the Court rendered its decision in May 2003. The Court did not accept Shetland Sea Farms' evidence that there was a contract for the supply of smolt for which the company was legally obliged to pay independent of the false letters. The Court considered that the evidence disclosed that the management of the company had been involved in a fraudulent scheme and reported the matter to the Chief Prosecutor in Scotland to consider whether criminal proceedings should be brought against three of Shetland Sea Farms' witnesses. The Court allowed the case to proceed, however, restricting it to a claim for loss of profit by Shetland Sea Farms to the extent that the company could establish the probable number of smolt that would have been introduced to Shetland but for the *Braer* incident.

The shipowner, the Skuld Club and the 1971 Fund appealed against that part of the Court's decision on the grounds that the loss of profit claim was based on the numbers and the cost of smolt as set out in the claim which was based on the alleged contracts which had been shown to be false.

In January 2005, the Appellate Court issued a judgement confirming the decision of the Court of first instance. Accordingly, although Shetland Sea Farms cannot rely on the existence of the alleged contract, the company could proceed with the claim on the basis that, even if there was no pre-existing contract, it would have acquired, reared and sold smolt from which it would earn a profit. The claimant has not quantified the claim in accordance with the criteria laid down by the Court.

In view of the conduct of Shetland Sea Farms, the Appellate Court issued an interim order in July 2006 against the company requiring it to pay the majority of the costs incurred by the shipowner, the Skuld Club and the Fund in relation to the Court proceedings. The Court made it a condition that the company paid these costs before it would be allowed to continue with the proceedings. By 31 December 2006 these costs had not been paid.

Following the court decision discussions have taken place between Shetland Sea Farms, the Skuld Club and the 1971 Fund, which indicate that the claim is likely to be withdrawn.

The Skuld Club has undertaken to pay any amount awarded by a final court decision.

## 14.4 ILIAD

*(Greece, 9 October 1993)*

The Greek tanker *Iliad* (33 837 GRT) grounded on rocks close to Sfaktiria island after leaving the port of Pylos (Greece), resulting in a spill of some 300 tonnes of Syrian light crude oil. The Greek national contingency plan was activated and the spill was cleaned up relatively rapidly.

In March 1994 the shipowner's liability insurer established a limitation fund amounting to Drs 1 497 million or €4.4 million (£3 million) with the competent court by the deposit of a bank guarantee.

The Court decided that claims should be lodged by 20 January 1995. By that date, 527 claims had been presented in the limitation proceedings, totalling Drs 3 071 million or €9 million (£6 million) plus Drs 378 million or €1.1 million (£740 000) for compensation of 'moral damage'.

In March 1994, the Court appointed a liquidator to examine the claims in the limitation proceedings. Due to the inordinate delay by the liquidator in submitting his report to the Court, the claimants submitted an official complaint against the liquidator for neglect of duty. An official inquiry has been launched and the Public Prosecutor summoned the liquidator to explain the delay in submitting the report.

The shipowner and his insurer took legal action against the 1971 Fund in order to prevent their rights to reimbursement from the Fund for any compensation payments in excess of the shipowner's limitation amount and to indemnification under Article 5.1 of the 1971 Fund Convention from becoming time-barred. The Court of first instance will hear the case in February 2008.

The owner of a fish farm, whose claim is for Drs 1 044 million or €3 million (£2 million), also interrupted the time-bar period by taking legal action against the 1971 Fund. All other claims have become time-barred vis-à-vis the 1971 Fund.

The liquidator submitted his report to the Court in March 2006. In his report, the liquidator assessed the 527 claims at €2 125 755 (£1.4 million), which is below the limitation amount applicable to the shipowner. However, 446 of these claimants, including the shipowner and his insurer, filed objections to the report. The Fund also filed interventions to the Court in relation to the report in which the Fund dealt with the criteria for the admissibility of claims for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention. The Fund, in its interventions, reserved vis-à-vis all claimants other than the shipowner, his insurer and the owner of the fish farm all rights deriving under Article 6 of the 1971 Fund Convention, ie the Article relating to time bar.

The next hearing in the limitation proceedings will take place at the Court of Appeal on 15 March 2007.

## 14.5 KRITI SEA

*(Greece, 9 August 1996)*

The Greek tanker *Kriti Sea* (62 678 GRT) spilled 20 to 50 tonnes of Arabian light crude oil while discharging at a terminal in the port of Agioi Theodori (Greece) some 22 nautical miles west of Piraeus, Greece. Rocky shores and stretches of beach were oiled, seven fish farms were affected and the hulls of pleasure craft and fishing vessels in the area sustained oiling.

In December 1996 the shipowner established a limitation fund amounting to Drs 2 241 million or €6.6 million (£4.4 million) by means of a bank guarantee.

Most claims have been resolved. However, three claims – those of the Greek State, a fish farm and a seaside resort owner – remain unresolved. In judgements rendered in March 2006, the Supreme Court quashed the Court of Appeal's decisions which had upheld the claims of the Greek State and the fish farm, on the grounds of lack of proper legal reasoning, and also quashed the Court of Appeal's decision which had rejected the seaside resort owner's claim, on the grounds of improper application of the law. The Supreme Court referred these claims back to the Court of Appeal to rehear the cases on their merits and to deal with the issue of quantum.

The Court of Appeal will hear the case in May 2007.

The aggregate amount of the settled claims and the amount claimed in the pending cases is below the level at which the 1971 Fund would be called upon to make any payments in respect of compensation or indemnification.

## 14.6 NISSOS AMORGOS

*(Venezuela, 28 February 1997)*

### The incident

The Greek tanker *Nissos Amorgos* (50 563 GRT), carrying approximately 75 000 tonnes of Venezuelan crude oil, ran aground whilst passing through the Maracaibo Channel in the Gulf of Venezuela on 28 February 1997. The Venezuelan authorities have maintained that the actual grounding occurred outside the Channel itself. An estimated 3 600 tonnes of crude oil was spilled.

The incident gave rise to legal proceedings in a Criminal Court in Cabimas, civil courts in Caracas and Maracaibo, the Criminal Court of Appeal in Maracaibo and the Supreme Court. A number of claims were settled out of court and the corresponding legal actions were withdrawn.

### Criminal proceedings

Criminal proceedings were brought against the master. In his pleadings to the Criminal Court in Cabimas the master maintained that the damage was substantially caused by deficiencies in Lake Maracaibo's navigation channel that were imputable to the Republic of Venezuela.

In a judgement rendered in May 2000, the Criminal Court dismissed the arguments made by the master and held him liable for the damage arising from the incident and sentenced him to one year and four months in prison. The master appealed against the judgement before the Criminal Court of Appeal in Maracaibo.

In September 2000 the Criminal Court of Appeal decided not to consider the appeal but ordered the Criminal Court in Cabimas to send the file to the Supreme Court due to the fact that the Supreme Court was considering a request by the fishermen's union FETRAPESCA for 'avocamiento'[5]. The Court of Appeal's decision appears to imply that the judgement of the Court of first instance is null and void.

In August 2004 the Supreme Court decided to remit the file on the criminal action against the master to the Criminal Court of Appeal.

In a judgement rendered in February 2005, the Criminal Court of Appeal held that it had been proved that the master had incurred criminal liability due to negligence causing pollution damage to the environment. The Court decided, however, that, in accordance with Venezuelan procedural law, since more than four and a half years from the date of the criminal act had passed, the criminal action against the master was time-barred. In its judgement the Court stated that this decision was without prejudice to the civil liabilities which could arise from the criminal act dealt with in the judgement which was declared time-barred.

### Claims for compensation in court

The situation in respect of the significant claims for compensation pending before the courts in Venezuela is shown overleaf.

**Claims by the Republic of Venezuela**

The Republic of Venezuela presented a claim for environmental damage for US$60 250 396 (£31 million) against the master, the shipowner and his insurer, Assuranceföreningen Gard (Gard Club), in the Criminal Court in Cabimas. The 1971 Fund was notified of the criminal action and submitted pleadings in the proceedings.

The Republic of Venezuela also presented a claim for environmental damage against the shipowner, the master of the *Nissos Amorgos* and the Gard Club before the Civil Court of Caracas for US$60 250 396 (£31 million). The 1971 Fund was not notified of the civil action.

At its July 2003 session, the Administrative Council reiterated the 1971 Fund's position that the components of the claims by the Republic of



[5] *Under Venezuelan law, in exceptional circumstances, the Supreme Court may assume jurisdiction, 'avocamiento', and decide on the merits of a case. Such exceptional circumstances are defined as those which directly affect the 'public interest and social order' or where it is necessary to re-establish order in the judicial process because of the great importance of the case. If the request of 'avocamiento' is granted, the Supreme Court would act as a court of first instance and its judgement would be final.*

| Claimant | Category | Claimed amount US$ | Court | Fund's Position |
|---|---|---|---|---|
| Republic of Venezuela | Environmental damage | $60 250 396 | Criminal Court | Time-barred |
| Republic of Venezuela | Environmental damage | $60 250 396 | Civil Court | Time-barred |
| Three fish processors | Loss of income | $30 000 000 | Civil Court | No loss proven |
| **Total** | | **$150 500 792 (£77 million)** | | |

Venezuela did not relate to pollution damage falling within the scope of the 1969 Civil Liability Convention and the 1971 Fund Convention and that these claims should therefore be treated as not admissible. At that session the Council noted that the two claims presented by the Republic of Venezuela were duplications, since they were based on the same university report and related to the same items of damage. It was also noted that the Procuraduria General de la Republica (Attorney General) had accepted this duplication in a note submitted to the 1971 Fund's Venezuelan lawyers in August 2001.

Article 6.1 of the 1971 Fund Convention provides as follows:

> Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

The legal actions by the Republic of Venezuela in the civil and criminal courts were brought against the shipowner and the Gard Club, not against the 1971 Fund. The Fund was therefore not a defendant in these proceedings, and although the Fund intervened in the proceedings brought before the Criminal Court in Cabimas, the actions could not have resulted in a judgement against the Fund. As stated above, Article 6.1 of the 1971 Fund Convention requires that in order to prevent a claim from becoming time-barred in respect of the 1971 Fund a legal action has to be brought against the Fund within six years of the date of the incident. No legal action had been brought against the 1971 Fund by the Republic of Venezuela within the six-year period, which had expired in February 2003. In October 2005 the Administrative Council endorsed the Director's view that the claims by the Republic of Venezuela were therefore time-barred vis-à-vis the 1971 Fund.

**Claims by fish processors**

Three fish processors presented claims in the Supreme Court totalling US$30 million (£15 million) against the 1971 Fund and the Instituto Nacional de Canalizaciones (INC). The Supreme Court would in this case act as court of first and last instance ('avocamiento'). At its July 2003 session, the Administrative Council noted that the claims had not been substantiated by supporting documentation and that they should therefore be treated as not admissible.

In August 2003 the 1971 Fund submitted pleadings to the Supreme Court arguing that, as the claimants had submitted and subsequently renounced claims in the Criminal Court in Cabimas and the Civil Court in Caracas against the master, the shipowner and the Gard Club for the same damage, they had implicitly renounced any claim against the 1971 Fund. The 1971

Fund also argued that not only had the claimants failed to demonstrate the extent of their loss, but the evidence they had submitted indicated that the cause of any loss was not related to the pollution. There have been no further developments in respect of these claims.

**'Avocamiento'**
In a judgement rendered in July 2005, the Supreme Court decided to accept the withdrawal of claims by a group of 11 fish and shellfish processors and the fishermen's union FETRAPESCA following the settlement reached by the six shrimp processors and the 2 000 fishermen with the 1971 Fund in December 2000. In its judgement, the Supreme Court also rejected the request for 'avocamiento'.

## Maximum amount available for compensation

Immediately after the incident, the *Nissos Amorgos* was detained pursuant to an order rendered by the Criminal Court of first instance in Cabimas. The shipowner provided a guarantee to the Cabimas Court for Bs3 473 million (£530 000), being the limitation amount applicable to the *Nissos Amorgos* under the 1969 Civil Liability Convention. The Cabimas Court ordered the release of the ship on 27 June 1997.

On 27 June 1997 the Cabimas Court issued an order which provided that the maximum amount payable under the 1969 Civil Liability Convention and the 1971 Fund Convention, namely 60 million SDR, corresponded to Bs 39 738 million or $83 221 800 (£43 million).

## Level of payments

In view of the uncertainty as to the total amount of the claims arising from this incident, the Executive Committee, and later the Administrative Council, decided to limit payments to a percentage of the loss or damage actually suffered by each claimant.

At the Administrative Council's May 2004 session, the Venezuelan delegation stated that the Republic of Venezuela had proposed that the Republic would stand 'last in the queue' and subject to the amount available for compensation from the Fund. The Council noted that the Vice-Minister of Foreign Affairs, in a letter to the Director, had stated that the Republic of Venezuela accepted that the claims by the Republic of Venezuela would be dealt with after the Fund had paid full compensation to legally recognised claimants within the maximum amount available established by the Conventions.

The Council instructed the Director to seek the necessary assurance from the Republic of Venezuela as to whether its understanding of the meaning of the term 'standing last in the queue' coincided with his (namely that the Government undertook not to pursue or seek payment for its claims for compensation under the Conventions, or under its national legislation implementing the Conventions, until all other admissible claims had been paid in full, either for the amount agreed in an out-of court settlement or as decided by a competent court in a final judgement). The Council authorised the Director to increase the level of payments to 100% of the established claims, when he had received the necessary assurance.

A letter from the Minister of Foreign Affairs of Venezuela received on 13 August 2004 gave, in the Director's opinion, the necessary assurance. As a result, the Director decided to increase the level of payments to 100%.

## Settled claims

The table overleaf summarises the settled claims.

## Recent developments

At the Administrative Council's October 2005 session, the Venezuelan delegation acknowledged that most outstanding claims resulting from the *Nissos Amorgos* incident were time-barred and requested the Administrative Council to authorise the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela to facilitate the resolution of the outstanding issues arising from this incident. That delegation pointed out that a resolution of the rest of the outstanding issues would contribute to the winding up of the 1971 Fund. The Council

| Claimant | Category | Settlement amount Bs | Settlement amount US$ |
|---|---|---|---|
| Petroleos de Venezuela S.A. (PDVSA) | Clean up | | $8 364 223 |
| ICLAM[6] | Preventive measures | Bs61 075 468 | |
| Shrimp fishermen and processors | Loss of income | | $16 033 389 |
| Other claims[7] | Property damage and loss of income | Bs289 000 000 | |
| **Total** | | **Bs350 075 468 (£53 000)** | **US$24 397 612 (£13 million)** |

invited the Director to approach the Gard Club and the Attorney General and the Public Prosecutor of the Republic of Venezuela for the purpose of assisting them in resolving the outstanding issues.

Since October 2005 there have been several meetings and discussions between the Venezuelan delegation and the 1971 Fund. During this period the 1971 Fund also held meetings and discussions with the Gard Club. In February 2006 the 1971 Fund wrote to the Venezuelan delegation setting out possible solutions to the outstanding issues. In May 2006 a meeting took place in Caracas between the various interested parties including representatives of the Venezuelan Government. The 1971 Fund was represented at the meeting by its Venezuelan lawyers. The purpose of the meeting was to brief the various parties as regards the current situation concerning the outstanding claims.

In June 2006 a meeting was held in London between the Venezuelan Government and the 1971 Fund at which time the Fund was informed that the Venezuelan authorities were well advanced in their internal discussions and that meetings would take place in Venezuela in the near future between the five government departments concerned and with representatives of the private claimants. The Venezuelan Government stated that it would inform the 1971 Fund of the outcome. In discussions with the Venezuelan Government in September 2006, the 1971 Fund was informed that a meeting had taken place in Caracas in August 2006. The 1971 Fund and the Gard Club participated in a meeting in Venezuela in early October 2006, but that did not result in any progress.

## Possible recourse action against Instituto Nacional de Canalizaciones (INC)

At its May 2004 session, the Administrative Council considered the issue of whether the 1971 Fund should take recourse action against INC, the agency responsible for the maintenance of the Lake Maracaibo navigation channel. The discussion was based on a document submitted by the Director. In conclusion the Director considered the following main factors:

(a) there were facts that spoke in favour of the incident being caused by deficiencies of the channel and other facts supporting the view that the grounding had been caused by negligence on the part of the vessel;

(b) the 1971 Fund would have the burden of proof that the incident had been caused by or contributed to by deficiencies in the channel;

(c) there was a risk element in any litigation and in this case the conflicting evidence



[6] *Instituto para el Control y la Conservación de la Cuenca del Lago de Maracaibo.*

[7] *Paid in full by the shipowner's insurer with the exception of the claim by Corpozulia, a tourism authority of the Republic of Venezuela.*

mentioned above increases the difficulty in predicting the outcome;

(d) a very similar case had been dealt with in arbitration in New York and the arbitrators had concluded that the grounding was solely caused by error in navigation; and

(e) a Venezuelan criminal court had held the master of the *Nissos Amorgos* liable for the incident, although this judgement was the subject of appeal[8].

The Council noted that, having taken into account all available information, the Director had considered on balance that it was unlikely that a recourse action by the 1971 Fund against INC would succeed and that for this reason he had proposed that the Fund should not pursue such an action.

In summing up the discussion that took place at the Council's May 2004 session, the Chairman stated that it was important that there should be a wide consensus for a decision not to take recourse action against INC and that, since a slight majority of those delegations that had expressed a view had been in favour of postponing a decision and that even some of those delegations supporting the Director's proposal had been very hesitant, such consensus did not exist. The Council decided that the 1971 Fund should postpone taking a position as to whether or not the Fund should take recourse action against INC.

The question was considered again by the Administrative Council at its October 2006 session. The Council noted that the factors mentioned under points (a) to (d) above had not changed since May 2004, that the Director therefore still considered it unlikely that a recourse action by the 1971 Fund against INC would succeed and that for this reason he maintained his recommendation that the Fund should not pursue such an action. The Council decided that the 1971 Fund should not take recourse action against INC.

## 14.7 PLATE PRINCESS

*(Venezuela, 27 May 1997)*

### The incident

The Maltese tanker *Plate Princess* (30 423 GRT) was berthed at an oil terminal at Puerto Miranda on Lake Maracaibo (Venezuela). While the ship was loading a cargo of 44 250 tonnes of Lagotreco crude oil, some 3.2 tonnes were reportedly spilled.

### Court proceedings

The limitation amount applicable to the *Plate Princess* under the 1969 Civil Liability Convention is estimated at 3.6 million SDR (£2.8 million). The shipowner provided a bank guarantee from Banco Venezolano de Credito (BVC) in the amount of Bs 2 844 million (£430 000).

In June 1997 a local fishermen's union, the Sindicato Único de Pescadores de Puerto Miranda, presented a claim in the Civil Court in Caracas against the shipowner and the master of the *Plate Princess* for an estimated amount of US$20 million (£10 million).

In June 1997 another fishermen's trade union (FETRAPESCA) brought an action against the master and the owner of the *Plate Princess* in the Criminal Court on behalf of 1 692 fishing boat owners, claiming an estimated US$10 060 per boat (£5 000), ie a total of US$17 million (£8.7 million). The claim was for alleged damage to fishing boats and nets and for loss of earnings. FETRAPESCA also brought a claim for fishermen's loss of income against the shipowner and the master of the *Plate Princess* before the Civil Court of Caracas for an estimated amount of US$10 million (£5 million).

The 1971 Fund was not notified of any of the legal actions.

### Time-bar provisions in the 1971 Fund Convention

In order to prevent a claim from becoming time-barred the claimant must, within three years of the date of the damage, either take legal action



[8] *As mentioned above the criminal proceedings have been terminated on the grounds that the action against the master was time-barred.*

against the 1971 Fund or notify the Fund of an action against the shipowner and/or his insurer in accordance with Article 7.6 of the Convention (Article 6.1, first sentence). Even if the claimant has notified the 1971 Fund of an action against the shipowner and/or his insurer within that period, the claim is time-barred unless the claimant takes legal action against the 1971 Fund within six years of the date of the incident (Article 6.1, second sentence).

## Consideration at the Administrative Council's October 2005 session

At the October 2005 session of the Administrative Council, the Venezuelan delegation stated that although it had been assumed that claims arising from this incident had become time-barred, its legal advisers were of the opinion that this was not the case by virtue of Article 7.6 of the 1971 Fund Convention. The Venezuelan delegation referred to a recent decision by the Venezuelan Supreme Court in respect of this incident.

## Notification of the 1971 Fund

Shortly after the Administrative Council's October 2005 session the 1971 Fund learned that both fishermen's unions had in 1997 requested the Court to notify the 1971 Fund of their actions. However, it was only on 31 October 2005 that the 1971 Fund was formally notified through diplomatic channels of the actions for compensation brought in the Civil Court in Caracas by FETRAPESCA and the Sindicato Único de Pescadores de Puerto Miranda against the shipowner and the master of the *Plate Princess* in June 1997.

## Considerations at the Administrative Council's February/March 2006 session

At the Administrative Council's February/March 2006 session the Director submitted a document in which he stated the following:

> Claims for compensation before the Venezuelan Courts were brought against the master and the shipowner in June 1997. The 1971 Fund was not named as a defendant in these actions. The 1971 Fund was not notified of the action against the shipowner until 31 October 2005, ie nearly seven and a half years after the damage occurred. Since the Fund was not notified of the claims against the shipowner within three years from the date when the damage occurred, in the Director's opinion these claims are time-barred under the 1971 Fund Convention pursuant to the first sentence of Article 6. They are, in his view, also time-barred under the second sentence of that Article since no action was brought against the Fund within six years from the date of the incident.
>
> The Director has examined the judgement by the Supreme Court referred to by the Venezuelan delegation at the Council's October 2005 session and has noted that it relates to an action by Sindicato Único de Pescadores de Puerto Miranda against BVC, the bank that issued the guarantee provided by the shipowner in connection with the incident. The issue dealt with in the judgement was whether the bank guarantee should be given back to BVC. In the Director's view, the judgement has no bearing on the 1971 Fund, since it relates to an action which is entirely different from those brought by the fishermen's unions against the shipowner.

At that session the Venezuelan delegation stated that it did not share the Director's view that the claim by the fishermen was time-barred, since legal action had been taken against the shipowner within the time set out in Articles 6 and 7.6 of the 1971 Fund Convention. The Venezuelan delegation also stated that Article 6 of the 1971 Fund Convention referred directly to Article 7.6 of that Convention which established that there had to be an action for compensation against the shipowner under the 1969 Civil Liability Convention or a notification to the 1971 Fund of such an action. The delegation further stated that both conditions did not have to be fulfilled; one of them was sufficient.

The Venezuelan delegation expressed the view that any decision by the Court was binding on the 1971 Fund and that the Fund had sufficient time to present its arguments before the courts since points of defence had not yet been submitted. The delegation requested the Administrative Council to instruct the Director to intervene in the proceedings, examine the claims for compensation presented and pay the compensation due to the victims.

The Administrative Council instructed the Director to take the necessary action to defend the 1971 Fund's position on time bar before the Venezuelan courts.

### Consideration at the Administrative Council's May 2006 session

In a document submitted to the Administrative Council's May 2006 session the Director stated that while he recognised that the final decision on whether the claims were time-barred vis-à-vis the 1971 Fund was a matter for the Venezuelan courts, he disagreed with the analysis by the Venezuelan delegation of the provisions of the 1971 Fund Convention.

In that document the Director stated that the provisions on time bar were always brutal in their application since, if not respected, claimants lost their rights to obtain compensation but that the 1971 Fund and the 1992 Fund governing bodies had decided that the provisions on time bar of the Conventions should be strictly adhered to. The Director also stated that the 1971 Fund had not been notified of the action against the shipowner in accordance with the formalities required by the law of the relevant court and that, in his view, the claims were therefore time-barred under the first sentence of Article 6.1 of the 1971 Fund Convention. The Director further stated that, in his view, the claims were also time-barred under the second sentence of Article 6.1 since no action had been brought against the 1971 Fund within six years from the date when the incident occurred.

The Venezuelan delegation stated that it maintained its view that the claims had not become time-barred because a legal action had been brought against the shipowner in June 1997 fulfilling the requirements established by Article 6.1 and Article 7.6 of the 1971 Fund Convention. The delegation made the point that under Article 6.1 of the 1971 Fund Convention it was not necessary to fulfill the two requirements but that it was sufficient to comply with one of them.

A number of delegations, whilst expressing sympathy with the victims of the incident and regretting that the time-bar provisions had worked to their detriment, stated that it was necessary to adhere to the current text of the Conventions. The point was made that knowledge of an incident by the Fund was not the same as formal notification in accordance with Article 6.1 of the 1971 Fund Convention. Those delegations agreed with the Director's interpretation of Articles 6.1 and 7.6 of the 1971 Fund Convention and expressed the view that the claims arising from the incident were time-barred.

The Administrative Council decided that the claims referred to above were time-barred in respect of the 1971 Fund.

The Venezuelan delegation stated that it intended to submit a document on the *Plate Princess* at a future session of the Administrative Council and asked that the incident should therefore remain on the Council's agenda.

## 14.8 KATJA

*(France, 7 August 1997)*

### The incident

The Bahamas-registered tanker *Katja* (52 079 GRT) struck a quay while manoeuvring into a berth at the port of Le Havre (France) resulting a spill of 190 tonnes of heavy fuel oil from a bunker tank. Beaches both to the north and to the south of Le Havre were affected and approximately 15 kilometres of quay and other structures within the port were contaminated. Oil also entered a marina at the entrance to the port and many pleasure boats were polluted.

The limitation amount applicable to the *Katja* in accordance with the 1969 Civil Liability Convention is estimated at €7.3 million (£5 million).

### Claims for compensation

A claim presented by the French Government for clean-up costs was settled in July 2000 at €207 000 (£140 000). Other claims relating to clean-up, property damage and loss of income in the fisheries sector were settled at a total of €2.3 million (£1.5 million).

Legal actions were taken against the shipowner, his liability insurer and the 1971 Fund relating to claims for the cost of clean-up operations incurred by the regional and local authorities, property damage and loss of income in the fisheries sector totalling €1.4 million (£940 000).

Only three claims totalling €976 000 (£600 000) remain pending in court, the largest of which is a claim by the Port Autonome du Havre (PAH) in respect of clean-up costs for €915 000 (£620 000).

It is virtually certain that all claims will be settled for an amount lower than the limitation amount applicable to the *Katja* under the 1969 Civil Liability Convention and that the 1971 Fund will not be called upon to make any payments in respect of this incident.

The shipowner and his insurer brought proceedings against the PAH. The grounds for the action were that (a) the port had sent the *Katja* to an unsuitable berth and had thereby been wholly or partially responsible for the incident and (b) the port's inadequate counter-pollution response to the incident had increased the extent of the pollution damage caused. As the 1971 Fund is unlikely to be called upon to make payments in respect of this incident, the 1971 Fund has not intervened in these proceedings.

At a hearing in May 2006, the PAH submitted pleadings rejecting the arguments submitted by the shipowner and claiming that the berth used by the *Katja* was not dangerous and that the response to the incident was appropriate.

Court hearings are scheduled for early 2007.

## 14.9 EVOIKOS

*(Singapore, 15 October 1997)*

### The incident

The Cypriot tanker *Evoikos* (80 823 GRT) collided with the Thai tanker *Orapin Global* (138 037 GRT) whilst passing through the Strait of Singapore. The *Evoikos*, which was carrying approximately 130 000 tonnes of heavy fuel oil, suffered damage to three cargo tanks, and an estimated 29 000 tonnes of its cargo were subsequently spilled. The *Orapin Global*, which was in ballast, did not spill any oil. The spilt oil initially affected the waters and some southern islands of Singapore, but later oil slicks drifted into the Malaysian and Indonesian waters of the Strait of Malacca. In December 1997 oil came ashore in places along a 40 kilometre length of the Malaysian coast in the Province of Selangor.

At the time of the incident, Singapore was Party to the 1969 Civil Liability Convention but not to the 1971 Fund Convention or the 1992 Conventions, whereas Malaysia and Indonesia were Parties to the 1969 Civil Liability Convention and the 1971 Fund Convention.

### Claims for compensation

All known admissible claims for compensation in Malaysia, Singapore and Indonesia have been settled by the shipowner.

In the limitation proceedings commenced by the shipowner in Singapore, the Court determined the limitation amount applicable to the *Evoikos* under the 1969 Civil Liability Convention at 8 846 942 SDR (£6.8 million).

The total compensation paid by the shipowner is well below the level at which the 1971 Fund would make any payments in respect of compensation or indemnification.

However, the shipowner's insurer commenced legal actions against the 1971 Fund in London, Indonesia and Malaysia to protect its rights against the Fund. The Indonesian Court, at the request of the insurer and the Fund, discontinued the action in Indonesia. The actions in London and in Malaysia were stayed by mutual consent. Although any further claims are time-barred under the Conventions, the insurer has informed the Fund that it is not prepared to withdraw its actions against the Fund in Malaysia and London until it has had the opportunity to establish that there are no outstanding claims against the shipowner which might result in the Fund being liable to pay compensation or indemnification. The Director has held discussions with the shipowner's insurer with a view to resolving outstanding issues.

## 14.10 PONTOON 300

*(United Arab Emirates, 7 January 1998)*

### The incident

The Saint Vincent and Grenadines barge *Pontoon 300* (4 233 GRT), which was being towed by the tug *Falcon 1*, sank in a depth of 21 metres off Hamriyah, in Sharjah (United Arab Emirates, UAE). An estimated 8 000 tonnes of intermediate fuel oil were spilled, which spread over 40 kilometres of coastline, affecting four Emirates. The most badly affected Emirate was Umm Al Quwain.

The *Pontoon 300*, which was owned by a Liberian company, was not covered by any insurance for oil pollution liability despite an obligation to have such cover. The tug *Falcon 1* was registered in Abu Dhabi and owned by a citizen of that Emirate.

### Claims for compensation

Claims in respect of clean-up operations and preventive measures have been settled for a total of Dhs 6.3 million (£958 000) and the 1971 Fund has paid a total of Dhs 4.8 million (£817 000), corresponding to 75% of the settlement amounts.

The Municipality of Umm Al Quwain presented claims against the 1971 Fund totalling Dhs 199 million (£28 million) on behalf of fishermen, tourist hotel owners, private property owners, a Marine Resource Research Centre (MRRC) and the Municipality itself (see table overleaf). Little or no documentation was provided in support of the claims, and the amounts involved appeared to be based upon estimates. The main claim by the Municipality was for environmental damage related to alleged losses of fish stocks and other marine resources, including mangroves. The estimation of the damage appeared to be based upon theoretical models.

The 1971 Fund informed the Umm Al Quwain Municipality that claims in respect of property damage and economic losses actually sustained were admissible in principle but that considerable supporting documentation was required before the Fund could assess the claims. The 1971 Fund also pointed out that claims for environmental damage based upon theoretical models were not admissible.

### Criminal action against the master of the tug *Falcon 1*

In November 1999 a Criminal Court of first instance found the master of the tug *Falcon 1*, the alleged cargo owner, the general manager of the tug owner and the general manager of the alleged cargo owner guilty of misuse of the barge *Pontoon 300*, which had not been in a seaworthy condition and thus in violation of United Arab Emirates law, and of causing harm to the people and the environment by use of the unseaworthy barge. The master of the tug *Falcon 1*, the tug owner and his general manager appealed against the judgement, but the alleged cargo owner and his general manager did not.

In February 2000 the Criminal Court of Appeal found the tug owner and his general manager not guilty. The Court of Appeal confirmed the guilty verdict against the master of the *Falcon 1*, the alleged cargo owner and his general manager. The master of the tug *Falcon 1* lodged an appeal in the Federal Court of Cassation, which sent the

case back to the Court of Appeal to consider the issues of the seaworthiness of the *Pontoon 300* and the master's defence of 'force majeure'.

In May 2004 the Criminal Court of Appeal re-opened the proceedings at the request of the master of the tug *Falcon 1*. In March 2005, the Court rejected the appeal filed by the master and sentenced the master to one year's imprisonment.

## Legal actions relating to claims

In September 2000 the Umm Al Quwain Municipality brought legal action in the Umm Al Quwain Court against the tug owner and the owner of the cargo on board the *Pontoon 300* in respect of its claims. The 1971 Fund was not joined as a defendant in the proceedings, nor was it formally notified of the proceedings. However, the plaintiffs requested the Court to notify the 1971 Fund of the action through diplomatic channels in accordance with Article 7.6 of the 1971 Fund Convention and through the Ministry of Justice in accordance with United Arab Emirates law of Civil Procedure.

Claims against the 1971 Fund became time-barred on or around 8 January 2001 at which point the Umm Al Quwain Municipality had not taken the measures laid down in the 1971 Fund Convention to prevent the claims becoming time-barred. In the proceedings, the 1971 Fund therefore maintained that the claims submitted by the Municipality were time-barred.

In December 2000 the Ministry of Agriculture and Fisheries in Umm Al Quwain joined the Umm Al Quwain Municipality's action as a co-plaintiff, claiming Dhs 6.4 million (£890 000), which corresponded to the claim by the MRRC included in the Municipality's claim. However, the Ministry also joined the 1971 Fund as a co-defendant in its action. Although the action had not been served on the 1971 Fund, the Administrative Council decided that this claim was not time-barred, since the Fund had been brought in as a defendant in the action before the expiry of the three-year time bar period.

In December 2001 the Umm Al Quwain Court issued a preliminary judgement in which it decided to refer the matter to a panel of experts experienced in oil pollution and the environment, to be appointed by the UAE Ministry of Justice. The Court further decided to combine all the pleadings relating to issues of jurisdiction and time bar and to review these after the experts had submitted their report.

The experts submitted their report to the Umm Al Quwain Court of first instance in February 2003. The pending claims and the court experts' assessment of the claims are summarised in the table below:

| Claim | Claimed amount (Dhs) | Assessed amount (Dhs) |
|---|---|---|
| Fishing | | |
| - Loss of income | 10 008 840 | 1 137 048 |
| - Property damage | 306 593 | 123 429 |
| Tourism | 765 389 | 122 570 |
| Property damage | 7 000 000 | 0 |
| Marine Resource Research Centre | 6 352 660 | 335 000 |
| Environmental damage | | |
| - Marine organisms | 130 294 415 | 0 |
| - Mangroves | 24 280 000 | 1 500 000 |
| Clean-up | 19 744 600 | 0 |
| **Total** | **Dhs 198 752 497 (£28 million)** | **Dhs 3 218 047 (450 000)** |

The 1971 Fund submitted to the Court its comments on the experts' report stating that, notwithstanding the Fund's position that the claims were time-barred, the assessments of the claims by the panel of experts was generally in line with the 1971 Fund's policy as regards the admissibility of claims for compensation.

The Umm Al Quwain Municipality and the Ministry of Agriculture and Fisheries objected to the experts' assessments of their losses and requested that the Court should refer the matter back to the experts with the instruction to reassess the claims in the light of their comments.

The owner of the tug *Falcon 1* submitted pleadings maintaining that the experts had failed to assess the claims in an objective manner. He stated that the report had been issued contrary to local law and jurisprudence and contained contradictions as regards facts and conclusions. He also stated that the report was faulty and incomplete and requested the Court to set aside the entire report. In October 2003 the Court decided to refer the case back to the experts for them to respond to the objections raised by the various parties.

The Fund held a number of meetings with the experts and the other parties with the aim of reaching agreement on the quantum of the losses, without prejudice to the issue of time bar in respect of the claims by Umm Al Quwain Municipality. As a result of these meetings the claim by the Ministry of Agriculture and Fisheries in respect of the MRRC, which was not time-barred, was settled at Dhs 1.6 million (£220 000). As a consequence of the settlement the claim was withdrawn from the legal proceedings in November 2006 and the settlement amount was paid in December 2006.

## Action by the 1971 Fund against the owner of the tug *Falcon 1*

In January 2000 the 1971 Fund took legal action against the owner of the tug *Falcon 1* maintaining that, since the sinking of the *Pontoon 300* had occurred due to its unseaworthiness and the negligence of the master and the owner of the *Falcon 1* during the towage, the tug owner was liable for the ensuing damage. The Fund claimed Dhs 6 million (£830 000).

The Fund's action gave rise to protracted litigation in the Dubai Court of first instance and the Court of Appeal. In this respect reference is made to the Annual Report 2005, page 65.

In April 2004, the Court of Appeal issued a judgement in favour of the 1971 Fund. The Court held that the charterer and the owner of the *Falcon 1* were jointly and severally liable to pay the Fund an amount of Dhs 4.7 million (£650 000).

The 1971 Fund appealed against this judgement to the Court of Cassation on the question of the quantum. The owner of the *Falcon 1* appealed against the judgement on procedural grounds, including, *inter alia*, that the civil case should have been suspended pending the final judgement in the criminal proceedings relating to the incident.

In its judgment rendered in January 2006, the Court of Cassation rejected the tug owner's appeal. The Court also rejected the Fund's appeal on the quantum and reversed the Court of Appeal's judgment in respect of the charterer, holding him not liable to pay compensation to the Fund. The Court of Cassation upheld the Court of Appeal's judgement as regards the liability of the tug owner, ie that the tug owner was liable to pay compensation to the 1971 Fund in the amount of Dhs 4.7 million (£650 000).

At the request of the owner of the *Falcon 1* a meeting was held in London in April 2006 between the Director and the Chairman of Mohammed Al Otaiba Group Est, the company that owned the *Falcon 1*. The Chairman of the company confirmed that he was in negotiations with the Umm Al Qwain Municipality for the purpose of reaching an out-of-court settlement in respect of its claim. He requested that the Fund delayed the service relating to the

execution proceedings in respect of the Dubai Court of Cassation's judgment to give him time to resolve the Umm Al Qwain Municipality's claim and the legal proceedings in the Umm Al Qwain Court.

In September 2006, the owner of the *Falcon 1* reported that he had reached a settlement with the Umm Al Qwain Municipality.

At its October 2006 session the Administrative Council instructed the Director not to proceed with the execution of the judgement against the owner of the tug *Falcon 1* if the legal action by the Umm Al Qwain Municipality against the 1971 Fund was withdrawn. This action was withdrawn in November 2006. The 1971 Fund will therefore not proceed with the execution of the judgement.

### Level of the 1971 Fund's payments

The maximum amount of compensation available under the 1969 Civil Liability Convention and the 1971 Fund Convention is 60 million SDR (£46 million).

In April 2000 the Executive Committee decided that, in view of the uncertainty regarding the total amount of claims for compensation, the 1971 Fund's payments should be limited to 75% of the loss or damage actually suffered by each claimant.

At its October 2006 session the Administrative Council considered again the question of the level of payments. Once the claim by the Ministry of Agriculture and Fisheries was settled the Fund's total exposure would be Dhs 200.3 million (£27.9 million). However, if the claim by the Umm Al Quwain Municipality, totalling Dhs 192.4 million (£26.7 million) were to be withdrawn the total amount of the admissible claims would fall well below the amount of compensation available. The Administrative Council decided therefore to authorise the Director to increase the level of payments from 75% to 100% of all settled claims if the legal action by the Umm Al Quwain Municipality against the 1971 Fund was withdrawn.

Since the claim by the Umm Al Quwain Municipality was withdrawn, the 1971 Fund increased the level of payments from 75% to 100% of all settled claims, in accordance with the Administrative Council's decision. The Fund is making arrangements to pay the outstanding amounts early in 2007.

## 14.11 AL JAZIAH 1

*(United Arab Emirates, 24 January 2000)*

### The incident

The tanker *Al Jaziah 1* (reportedly of 681 GRT), laden with fuel oil, sank in about 10 metres of water five nautical miles north-east of the port of Mina Zayed, Abu Dhabi (United Arab Emirates, UAE). It was estimated that approximately 100 to 200 tonnes of cargo escaped from the wreck. The oil drifted under the influence of strong winds towards the nearby shorelines, thereby polluting a number of small islands and sand banks. Some mangroves were also oiled. The sunken vessel was refloated by salvors and taken into the Abu Dhabi Freeport.

The vessel was not entered with any classification society and did not hold any liability insurance.

### Application of the Conventions and the distribution of liability between the 1971 and 1992 Funds

The 1992 Fund Executive Committee and the 1971 Fund Administrative Council decided that since at the time of the *Al Jaziah 1* incident the United Arab Emirates was a Party to both the 1969/1971 Conventions and the 1992 Conventions, both sets of Conventions applied to the incident, and that the liabilities should be distributed between the 1971 Fund and 1992 Fund on a 50:50 basis.

### Claims for compensation

Claims in various currencies totalling £1.1 million were submitted in respect of the costs of clean-up operations and preventive measures. These claims were settled and paid at Dhs 6.4 million (£920 000).

## Criminal proceedings

The Abu Dhabi Public Prosecutor brought criminal proceedings against the master of the *Al Jaziah 1*. In a statement given to the Public Prosecutor the master had stated that the vessel was designed as a water carrier and was in a dangerous condition and badly maintained.

The Court held, *inter alia*, that the vessel had caused damage to the environment and that it did not fulfil basic safety requirements, was not fit to sail, had many holes in the bottom and was not authorised by the UAE Ministry of Communications to carry oil. The Court concluded that the sinking of the vessel was due to these deficiencies.

The master was fined Dhs 5 000 (£700) for causing damage to the environment.

## Recourse action

The governing bodies of the 1971 and 1992 Funds decided that the Funds should pursue recourse action against the owner of the *Al Jaziah 1*.

In January 2003 the Funds commenced legal action in the Abu Dhabi Court of first instance against the shipowning company and its sole proprietor, requesting that the defendants should pay Dhs 6.4 million to the Funds, the amount to be distributed equally between the 1971 Fund and the 1992 Fund.

In May 2003 the defendants filed pleadings in which they argued that the Funds had not submitted admissible evidence in respect of the incident or details of the alleged losses suffered by the parties, and that the subrogation of the claimants' rights had not been done correctly under UAE law. They further maintained that the persons who were alleged to have suffered losses had not exercised their right to claim against the shipowner under the Civil Liability Conventions. It was argued that under Articles 2, 4.1 and 5 of the Fund Conventions, the Funds should only pay compensation if the persons suffering pollution damage had been unable to obtain recovery from the shipowner under the Civil Liability Conventions.

The Funds submitted further pleadings arguing that the shipowner had failed to set up a limitation fund in accordance with the 1969 and 1992 Civil Liability Conventions, and that since there was no indication that the shipowner had any intention of paying compensation, the Funds had decided to pay compensation to those who had suffered pollution damage. The Funds further argued that the subrogation of the claimants' rights was based on Article 9 of the Fund Conventions and not on UAE law, which required a court judgement for a party to acquire subrogated rights in order to be able to commence proceedings against a third party. The Funds also presented the Court with further evidence in relation to the incident and the losses caused, including documents issued by various government authorities.

In November 2003 the Abu Dhabi Court of first instance appointed an expert to investigate the nature of the incident and the payments made by the 1971 and 1992 Funds. The Funds met with the expert on two occasions and provided supplementary information as requested by the expert.

In August 2005 the expert informed the Court that he could not complete his report due to other commitments and the Court appointed a new expert with the same mandate. The Funds met with the new expert in October 2005 and provided all information requested by him in order for him to be able to complete his report.

The expert submitted his report to the Court in July 2006. In his report the expert confirmed the following:

- The incident had caused pollution damage to various parties within the Emirate of Abu Dhabi.
- The Funds had paid a total of Dhs 6.4 million in compensation to those affected by the pollution.
- The ship had not been registered as an oil tanker and its insurance policies had expired.
- The shipowner was liable for the damage caused by the incident.

The expert appeared to suggest that the Funds had paid claims without scrutinizing them. He also made the point that there was gross negligence on the part of the authorities in permitting the ship, which was not a tanker, to load a cargo of oil and allowing it to depart in inclement weather. Therefore, the expert suggested that the lack of appropriate legislation in the UAE dealing with the licensing authority and loading facilities had contributed directly to the incident. The expert concluded that considering the lack of such legislation, the UAE authorities should be partly liable for paying compensation for the damage arising from this incident.

In September 2006 the Funds submitted a memorandum to the Court which set out their comments on the expert's report. The Funds agreed with the main conclusions reached by the expert.

In the memorandum, the Funds commented on the expert's view in relation to the payments made to claimants. The Funds explained that all claims had been assessed on the basis of the admissibility criteria established by the Funds' Member States. The Funds also dealt with the issue of strict liability of the shipowner under the Civil Liability Conventions. The Funds stated that the expert's opinion that the UAE authorities should be partly liable for this incident was incorrect since under the Conventions the shipowner had strict liability. The Funds requested the Court to hold the shipowner solely liable for the damage arising from this incident and to order the sole proprietor of the shipowning entity to pay the Funds Dhs 6.4 million.

At a hearing in September 2006, the shipowner requested an adjournment so that he could submit comments on the expert's report.

In October 2006 the shipowner submitted a memorandum to the Court setting out his comments on the expert's report.

At a hearing on 29 November 2006 the Court referred the matter back to the same expert to consider the objections raised by the shipowner in his Memorandum. The next hearing was scheduled for 16 January 2007 to allow the expert to submit a supplementary report.

## 14.12 ALAMBRA

*(Estonia, 17 September 2000)*

### The incident

The Maltese tanker *Alambra* (75 366 GT) was loading a cargo of heavy fuel oil in the Port of Muuga, Tallinn (Estonia), when an alleged 300 tonnes of cargo escaped from a crack in the vessel's bottom plating. The *Alambra* remained in its berth whilst clean-up operations were carried out but was subsequently detained by the Estonian authorities pending a decision by the Tallinn Port Authority to allow the remaining 80 000 tonnes of cargo on board to be removed. The cargo transfer was eventually undertaken in February 2001, and in May 2001 the vessel finally left Estonia for scrapping.

### Limitation of liability

The limitation amount applicable to the *Alambra* under the 1969 Civil Liability Convention is estimated at 7.6 million SDR (£5.8 million).

### Claims for compensation

The shipowner and his insurer, the London Steam-Ship Owners Mutual Insurance Association Ltd (London Club), have settled claims for clean-up costs for a total of US$620 000 (£320 000). The Estonian Court of first instance approved this settlement in March 2004, and all court actions against the shipowner and the Club in relation to claims in respect of clean-up were terminated.

A claim by the Estonian State for EEK 45.1 million (£1.9 million), which had the character of a fine or charge, was settled by the shipowner and the London Club at US$655 000 (£335 000). The Court approved this settlement in March 2004, and the proceedings against the shipowner and the Club in relation to this claim were terminated.

A claim for US$100 000 (£51 000) has been presented to the shipowner and the London Club by a charterer of a vessel said to have been delayed whilst clean-up operations were being undertaken.

The owner of the berth in the Port of Muuga from which the *Alambra* was loading cargo at the time of the incident, and a company contracted by the owner of the berth to carry out oil-loading activities on its behalf, have submitted claims to the shipowner and the London Club for EEK 29.1 million (£1.3 million) and EEK 9.7 million (£420 000) respectively for loss of income due to the unavailability of the berth whilst clean-up operations were being undertaken.

## Legal actions

In November 2000 the owner of the berth in the Port of Muuga and the company it had contracted to carry out oil-loading operations took legal action in the Court of first instance in Tallinn against the shipowner and the London Club and requested the Court to notify the 1971 Fund of the proceedings in accordance with Article 7.6 of the 1971 Fund Convention. Having been notified of the actions, the 1971 Fund intervened in the proceedings.

In the context of these legal actions, the question arose as to whether the 1969 Civil Liability Convention and the 1971 Fund Convention had been correctly implemented into Estonian national law.

### The constitutional issue

On 1 December 1992 Estonia deposited its instruments of ratification of the 1969 Civil Liability Convention and the 1971 Fund Convention with the International Maritime Organization. As a result, the Conventions entered into force for Estonia on 1 March 1993. However, the lawyers acting for the shipowner and the London Club, as well as the Estonian lawyers acting for the 1971 Fund, drew their clients' attention to the fact that, in their view, under the Estonian Constitution, ratification of the Conventions should not have taken place before the Estonian Parliament had given its approval and adopted the necessary amendments to the national legislation. The Conventions were not submitted to Parliament and the necessary amendments to national law were not made. The Conventions had not been published in the Official Gazette. For these reasons these Conventions did not, in the view of these lawyers, form part of national law and could not be applied by the Estonian courts.

The shipowner and the London Club raised this issue in their pleadings in the Court of first instance, as did the 1971 Fund in order to protect its position.

On 1 December 2003 the Court of first instance rendered its decision on the constitutional issue. The Court held that since the Government had ratified the 1969 Civil Liability Convention without prior approval by Parliament, the ratification procedure had been a breach of the Estonian Constitution. For this reason the Court decided that the Convention could not be applied in the case under consideration and should be declared in conflict with the Constitution. The Court of first instance therefore ordered that constitutional review proceedings should be initiated before the Supreme Court.

### Constitutional review

In a decision issued in April 2004, the Supreme Court held that it would not carry out the constitutional review requested by the Court of first instance. The reasons for the Supreme Court's decision can be summarised as follows:

> The Supreme Court referred to the fact that the Court of first instance had initiated constitutional review proceedings without making a substantial decision in the case. In earlier decisions the Supreme Court had held that when carrying out a constitutional review, it had first verified whether the provision declared contrary to the Constitution was relevant in resolving the case before the courts, because under the Code of Constitutional Review the Supreme

Court should only declare provisions relevant in that sense contrary to the Constitution or invalid. The Supreme Court stated that the decisive factor in determining the issue of relevance was whether the provision in question was of decisive importance in the case, namely whether the case would be decided differently if the provision was considered contrary to the Constitution than if this were not to be the case. The Supreme Court noted that the Court of first instance had issued its decision without determining the facts of material importance to the case. The Supreme Court stated that the Court of first instance could not have been sure at the time of issuing its decision which regulation was applicable and of decisive importance in the case. The Supreme Court held that it could not assess which legal norm was relevant in solving the case and whether that norm was in accordance with the Constitution.

**Other issues raised in the legal proceedings**

In September 2002 the London Club filed pleadings in court in respect of the claims presented by the Port of Muuga and the contractor for the loading operations, maintaining that the shipowner had deliberately failed to make the necessary repairs to the *Alambra* resulting in the ship becoming unseaworthy, and that therefore under the insurance contract as well as under the Merchant Shipping Act, the Club was not liable to pay compensation for the damage resulting from the incident.

The 1971 Fund filed pleadings arguing that under Estonian law the concept of wilful misconduct was to be interpreted as an intentional act, not only in respect of the incident but also in respect of the effect thereof, ie that the shipowner deliberately caused pollution damage. The Fund maintained that the evidence presented regarding the condition of the *Alambra* did not establish that the shipowner was guilty of wilful misconduct and that the insurer was therefore not exonerated from its liability for pollution damage.

The proceedings are ongoing in the Court of first instance. No date has been fixed for the next hearing.

# 15 1992 FUND INCIDENTS

## 15.1 INCIDENT IN GERMANY

*(Germany, June 1996)*

### The incident

From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands in the North Sea close to the border with Denmark. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture were removed from the beaches.

Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 $m^3$ of oil which could not be discharged by the ship's pumps.

The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his liability insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

### 1992 Fund's involvement

The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund.

The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£29 million).

### Legal actions

In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the owner of the *Kuzbass* and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million or €1.3 million (£875 000). The claim was subsequently increased to DM2.8 million or €1.4 million (£940 000) plus interest.

The 1992 Fund was notified in November 1998 of the legal actions. The 1992 Fund intervened in the proceedings in order to protect its interests.

For summaries of the pleadings by the parties reference is made to the Annual Report 2001, pages 102 and 103.

In order to prevent its claims against the Fund becoming time-barred at the expiry of the six-year period from the date of the incident, the German Government took legal action against the 1992 Fund in June 2002. The 1992 Fund applied successfully to the Court to stay the proceedings in respect of this action, pending the outcome of the action by the German Government against the shipowner and the West of England Club.

In December 2002 the Court of first instance rendered a part-judgement in which it held that the owner of the *Kuzbass* and the West of England Club were jointly and severally liable for the pollution damage. The Court acknowledged that the German Government had failed to provide conclusive evidence that the *Kuzbass* was the vessel responsible, but that the circumstantial evidence pointed overwhelmingly to that conclusion. The Court did not deal with the quantum of the losses suffered by the German authorities and stated that this issue would be considered at the request of one of the parties, but not until the judgement on the liability issue had become final.

The shipowner and the West of England Club appealed against the judgement. As regards the main grounds of appeal and the responses by the parties reference is made to the Annual Report 2005, pages 70 and 71.

At a hearing in December 2004, the Schleswig-Holstein Appeal Court indicated that on the basis of the evidence submitted to date, it was far from convinced that the *Kuzbass* was the source

of the pollution, and in particular drew attention to other potential ship sources that the German authorities had failed to investigate. The Court also raised doubts regarding the correctness of the circumstantial evidence and the Court of first instance's interpretation of that evidence. The Appeal Court stated that on the basis of the documentation submitted, the prospects of the shipowner/West of England Club succeeding in the appeal were significantly better than those of the German Government. The Court strongly recommended that the parties reach an out-of-court settlement to the effect that the shipowner and the West of England Club would pay the German Government €120 000 (£80 000) and that the recoverable costs would be shared between the German Government and the shipowner/West of England Club on a 92%-8% basis. This recommendation would imply that the 1992 Fund should pay the balance of the admissible amount of the German Government's claim.

The Director, in consultation with the German Government, held without prejudice discussions with the West of England Club with a view to reaching an out-of-court settlement. The shipowner and the West of England Club made a proposal for an out-of-court settlement involving all parties whereby the shipowner and the West of England Club would pay 18% and the 1992 Fund 82% of any proven losses suffered by the Federal Republic of Germany as a result of the incident.

At its March 2005 session the Executive Committee authorised the Director to conclude an out-of-court settlement with all other parties involved (ie the Federal Republic of Germany, the shipowner and the West of England Club) provided that the amount to be paid by the shipowner and the Club was increased above the 18% on offer.

Following the March 2005 session the West of England Club and the shipowner increased their offer from 18% to 20%. The Director considered that under the circumstances there was no possibility to persuade them to increase the offer beyond 20%, and in the light of the Committee's decision, therefore decided to accept the proposed settlement offer.

In July 2005 the 1992 Fund and the West of England Club, with the assistance of its experts, completed a preliminary assessment of the claim submitted by the German authorities. The claim was provisionally assessed at €932 000 (£630 000) pending receipt of further information in respect of some claim items.

In February 2006 the German authorities provided additional documentation in support of their claim, as a result of which the Fund and the West of England Club were able to increase the assessed amount to €1.1 million (£740 000). It is expected that the claim will be settled in early 2007.

## 15.2 DOLLY

*(Caribbean, 5 November 1999)*

### The incident

The *Dolly* (289 GT), registered in Dominica, was carrying some 200 tonnes of bitumen when it sank at 20 metres depth in Robert Bay, Martinique.

There is a national park, a coral reef and mariculture near the grounding site, and artisanal fishing is carried out in the area. There were fears that fishing and mariculture would be affected if bitumen or oil were to escape.

The *Dolly* was originally a general cargo vessel, but special tanks for carrying bitumen had been fitted, together with a cargo heating system. The ship did not have any liability insurance. The owner is a company in St Lucia.

The shipowner was ordered to remove the wreck by the authorities but did not comply with the order, probably due to lack of financial resources.

### Definition of 'ship'

In January 2001 the Executive Committee considered the question of whether the *Dolly* fell within the definition of 'ship' in the light of information which the French authorities had

provided to the 1992 Fund, including the original drawings and a sketch showing modifications that had subsequently been made to the vessel. The 1992 Fund's experts expressed the opinion that although the *Dolly* had been originally designed as a general cargo vessel, it had subsequently been adapted for the carriage of oil in bulk as cargo, and that it therefore fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention. The Committee decided that the *Dolly* fell within that definition.

## Measures to prevent pollution

Since the shipowner did not take any measures to prevent pollution, the French authorities arranged for the removal of 3.5 tonnes of bunker oil and requested three salvage companies to submit proposals on how to eliminate the threat of pollution by bitumen. These companies submitted proposals on the basis of diving inspections of the wreck. The French authorities provided the 1992 Fund with copies of these proposals.

In July 2001 the Executive Committee concurred with the Director's opinion that, in view of the location of the wreck in an environmentally sensitive area, an operation to remove the threat of pollution by the bitumen would in principle constitute 'preventive measures' as defined in the 1992 Conventions. The Committee instructed the Director to examine with the 1992 Fund's experts and the French authorities the proposed measures to remove the bitumen.

In July 2001 the Director informed the French Government of the Fund's experts' opinion on the various proposals. The Director stressed that any claims presented by the French authorities in respect of operations on the wreck of the *Dolly* would be examined against the Fund's admissibility criteria and that the Fund would not approve the costs of the operation in advance of the work being carried out.

In August 2004 the French authorities informed the Fund that a contract had been awarded to a consortium comprising a French diving company and the managers of a yacht marina in Martinique. The original intention had been to right the vessel on the seabed before removing the three cargo tanks containing the bitumen from the ship's hold, following which the tanks would be towed to a dry dock in Fort de France for the bitumen to be removed. The total cost of the operation was estimated at around €1.1 million (£740 000).

Operations commenced in October 2004. Attempts to right the vessel on the seabed were unsuccessful, and the contractors therefore decided to cut through the side and deck plating of the wreck in order to gain access to the three tanks containing the bitumen. As a result of heavy sea conditions and a number of unforeseen practical problems, removal of the tanks took longer than planned and proved more difficult than anticipated. By mid-December 2004, the contractors had removed the tanks from the hold with the aid of floatation bags and laid them on the seabed near to the wreck where they were left until March 2005 when the weather was more conducive to towing the tanks to the dry dock. Operations were resumed in March 2005 as planned. However, as a result of further technical problems the towing of the tanks to shore and the removal of the bitumen were not completed until July 2005.

## Claims for compensation

In March 2006 the French Government submitted a claim for €1 388 361 (£935 000) for the costs of removing the bunker fuel and the bitumen cargo from the wreck. In June 2006 the claim was increased to €1 457 753 (£1 030 000) to take into account additional costs arising from the technical and meteorological problems.

The shipowner did not have financial resources to pay any compensation. The ship did not have any liability insurance. For these reasons the Director decided that the 1992 Fund should compensate the French Government under Article 4.1(b) of the 1992 Fund Convention.

In August 2006 the 1992 Fund approved the claim for €1 457 753 (£1 030 000) as claimed. The settlement amount was paid to the French Government in September 2006.

### Legal action

In October 2002 the French Government took legal action against the shipowner and the 1992 Fund provisionally claiming €232 000 (£160 000) in respect of the costs of removing the bunker oil from the *Dolly*. It was stated in the writ of summons that further costs in excess of €2.2 million (£1.5 million) would be claimed in respect of the removal of the wreck and cargo.

The limitation amount applicable to the *Dolly* under the 1992 Civil Liability Convention is 3 million SDR (£2.3 million).

As a result of the settlement of the claim the French Government withdrew its legal action against the Fund in October 2006.

## 15.3 ERIKA

*(France, 12 December 1999)*

### The incident

On 12 December 1999 the Maltese-registered tanker *Erika* (19 666 GT) broke in two in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. All members of the crew were rescued by the French marine rescue services.

The tanker was carrying a cargo of 31 000 tonnes of heavy fuel oil of which some 19 800 tonnes were spilled at the time of the incident. The bow section sank in about 100 metres of water. The stern section sank to a depth of 130 metres about 10 nautical miles from the bow section. Some 6 400 tonnes of cargo remained in the bow section and a further 4 700 tonnes in the stern section.

### Clean-up operations

Some 400 kilometres of shoreline were affected by oil. Although the removal of the bulk of the oil from shorelines was completed quite rapidly, considerable secondary cleaning was still required in many areas in 2000. Operations to remove residual contamination began in spring 2001. By the summer tourist season of 2001, almost all of the secondary cleaning had been completed, apart from at a small number of difficult sites in Loire Atlantique and the islands of Morbihan. Clean-up efforts continued at these sites in the autumn and most were completed by November 2001.

More than 250 000 tonnes of oily waste were collected from shorelines and temporarily stockpiled. Total SA, the French oil company, engaged a contractor to deal with the disposal of the recovered waste and the operation was completed in December 2003. The cost of the waste disposal was estimated at some €46 million (£31 million).

### Removal of the oil remaining in the wreck

The French Government decided that the oil should be removed from the two sections of the wreck. The oil removal operations, which were funded by Total SA, were carried out by an international consortium during the period June to September 2000. No significant quantities of oil escaped during the operations.

### Shipowner's limitation fund

At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£8.6 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's liability insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

In 2002 the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes. In 2006 the limitation fund was again transferred, this time to the Commercial Court in Saint-Brieuc.

### Maximum amount available for compensation

The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million SDR per incident, including the

sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount shall be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision by the Assembly as to the first date of payment of compensation.

Applying the principles laid down by the Assembly in the *Nakhodka* case, the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations. The Director's calculations gave 135 million SDR = FFr1 211 966 811 which corresponded to €184 763 149 (£124 million).

## Undertakings by Total SA and the French Government

Total SA undertook not to pursue claims against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and the disposal of oily waste and from a publicity campaign to restore the image of the Atlantic coast if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR.

The French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. However the French Government's claims would rank before any claims by Total SA if funds were available after all other claims had been paid in full.

## Other sources of funds

The French Government introduced a scheme to provide emergency payments in the fishery sector, administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. OFIMER stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. OFIMER paid €4.2 million (£2.8 million) to claimants in the fishery sector and €2.1 million (£1.4 million) to salt producers.

The French Government also introduced a scheme to provide supplementary payments in the tourism sector. Payments totalling €10.1 million (£6.8 million) were made under that scheme.

## Level of the 1992 Fund's payments

In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the Executive Committee decided in July 2000 that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60% and in June 2001 to 80%. In February 2003 the Committee authorised the Director to increase the level of payments to 100% when he considered it safe to do so. In April 2003 the Director increased the level of payments to 100%.

## Payments to the French State

In October 2003 the Executive Committee authorised the Director to make payments in respect of the French Government's claim if and to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims.

After having reviewed the assessment of the total level of admissible claims, the Director decided that there was a sufficient margin to commence payments to the French State and in December 2003 the 1992 Fund made an initial payment of €10.1 million (£7 million) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector. In

October 2004 the 1992 Fund paid a further €6 million (£4.2 million) to the French State relating to the French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors administered by OFIMER. In December 2005 the 1992 Fund paid the French State €15 million (£10.3 million) towards the costs incurred by the French authorities in the clean-up response. In October 2006 the 1992 Fund paid the French State a further €10 million (£6.8 million) towards these costs.

It is expected that further payments in respect of clean-up costs will be made in 2007 as the Fund's exposure to other claims decreases.

## Claims Handling Office

The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient to serve as a focal point for the claimants and the technical experts engaged to examine the claims for compensation.

Some 50 experts have been involved in the examination of the claims relating to clean-up, fishing, mariculture and tourism.

The Claims Handling Office was closed on 31 July 2004, although the office manager continues to deal with outstanding issues from his office in Lorient.

## Claims handling

As at 31 December 2006, 6 997 claims for compensation had been submitted for a total of €387 million (£260 million). By that date 98.4% of the claims had been assessed. Some 1 060 claims, totalling €24.0 million (£16.2 million), had been rejected.

Payments of compensation had been made in respect of 5 665 claims for a total of €128 million (£84.5 million), out of which Steamship Mutual had paid €12.8 million (£8.6 million) and the 1992 Fund €115.2 million (£75.9 million).

The table below gives details of the situation in respect of claims in various categories.

## Assessment of the French Government's claim for clean-up

The procedure for assessment of the claim by the French State in respect of costs incurred by French authorities in the clean-up response was considered by the Executive Committee in February 2006. The claim, which comprised some 250 000 pages of documentation, was for a total of €178.8 million (£120 million). If the claim were to be assessed by the Fund's experts in the normal way, it would take at least two years to complete the work. At the time of the Committee's session, the payments made to claimants (except the €15 million payment on account to the French State for clean-up costs)

**CLAIMS SITUATION AS AT 31 DECEMBER 2006**

| Category | Claims submitted | Claims assessed | Claims rejected | Payments made | |
|---|---|---|---|---|---|
| | | | | Number of claims | Amounts € |
| Mariculture and oyster farming | 1 007 | 1 002 | 89 | 846 | 7 763 339 |
| Shellfish gathering | 530 | 527 | 109 | 370 | 889 189 |
| Fishing boats | 319 | 318 | 29 | 282 | 1 099 551 |
| Fish and shellfish processors | 51 | 50 | 6 | 43 | 976 832 |
| Tourism | 3 692 | 3 672 | 441 | 3 207 | 76 449 977 |
| Property damage | 712 | 686 | 342 | 334 | 2 152 132 |
| Clean-up operations | 149 | 143 | 12 | 125 | 31 806 507 |
| Miscellaneous | 537 | 490 | 30 | 458 | 6 907 815 |
| **Total** | **6 997** | **6 888** | **1 058** | **5 665** | **128 045 342** |

totalled €102.4 million (£67.1 million). The Director estimated that the payments to be made to claimants (other than the French State) would total at least some €120 million (£81 million).[9] Since the amount available for compensation for this incident was €184.8 million (£124 million), the amount payable to the French State for clean-up operations would not exceed some €65 million (£43 million). For these reasons the Director had looked for a more pragmatic way of assessing the French State's claim up to that amount by carrying out a broad assessment of three major components of the claim in order to establish the lowest conceivable admissible amount.

The largest component of the claim, for €128 million (£86 million), comprising shoreline clean-up costs incurred by the Prefectures of the five affected departments in support of the coastal communes, had been assessed at €64 million (£43 million). Another major component of the claim, for €23 million (£15.4 million), relating to costs of providing military personnel to assist with beach cleaning, had been assessed at €16 million (£10.8 million). The third major component of the claim, for €18.4 million (£12.4 million), relating to the cost of at-sea operations, including towing the casualty, monitoring the wreck, aerial surveillance of the oil and clean-up operations, had been assessed at €1 million (£670 000), although it was anticipated that a more detailed assessment would inevitably increase this amount to some €9 million (£6.1 million).

On the basis of such a broad assessment of the three major components of the claim by the French State, the minimum total admissible amount was estimated at some €81 million (£54.6 million), well in excess of the maximum amount that was likely to be available (some €65 million) to the French State after all other claims arising from the incident (except that of Total SA) had been settled and paid. Whilst a full assessment of the claim by the French State would inevitably result in the admissible amount increasing substantially, in the Director's view such a full assessment would not be justified given the enormous amount of time that would be required to complete the work and the limited amount of money that would be available to pay the claim.

In February 2006 the Executive Committee gave its unanimous support for the Director's approach to the assessment of the French State's claim for clean-up costs. The point was made that in view of the size of the claim in relation to the maximum amount of money likely to be available for payment, a full assessment of the claim could not be justified. The Committee noted that the assessment would be without prejudice to the French Government's position in any recourse action against third parties.

## Claims by salt producers

Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which had been imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient seawater to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.

Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake were received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier as well as for losses caused by the late start of the 2001 season. Claims were also presented for costs of restoration of salt ponds in Guérande in 2001.

The experts engaged by the 1992 Fund and Steamship Mutual had considered that salt production had been possible in Guérande in



[9] *That amount includes the payments made to the French State in December 2003 and October 2004 totalling €16.1 million (£13 million), which related to the Government's subrogated claims, but not the payment on account of €15 million (£10.3 million) made to the State in December 2005 .*

2000, but that as a result of the interruption caused by the ban on water intake, the maximum yield would have been 20% of that expected for the year. Interim compensation payments were therefore made to the claimants for the outstanding 80%.

As regards the salt producers in Noirmoutier, the 1992 Fund and Steamship Mutual had also considered that salt production had been possible in 2000, but that the maximum yield would have been 30% of that expected for the year. Compensation payments were made to the salt producers for the outstanding 70%. Eighty producers accepted the Fund's assessment whereas five submitted claims in court.

At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether it would have been feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. The court expert presented his report in late December 2004. The court expert concluded that salt production would have been feasible in 2000, but that as a result of the bans that were imposed, the maximum yield would have been between 4% and 11% of normal production.

In the light of the court expert's findings the 1992 Fund approached claimants with the objective of exploring the possibility of reaching out-of-court settlements. Such settlements have been reached with 22 of the salt producers in Guérande on the basis of a loss of production of 95%. Claims are being pursued in court by some 140 salt producers from this area. The court proceedings are due to take place in March 2007.

## Criminal proceedings

On the basis of a report by an expert appointed by a magistrate in the Criminal Court in Paris, criminal charges were brought in that Court against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society Registro Italiano Navale (RINA), one of RINA's managers, Total SA and some of its senior staff.

The trial is expected to start on 12 February 2007 and is likely to last several months.

## Investigations into the cause of the incident

Since the *Erika* was registered in Malta, the Malta Maritime Authority conducted a Flag State investigation into this incident. The Authority issued its report in September 2000. An investigation was also carried out by the French Permanent Commission of Enquiry into Accidents at Sea (La Commission permanente d'enquête sur les événements de mer). The report of this investigation was published in December 2000. The conclusions of these investigations are summarised in the Annual Report 2001, pages 118 and 119.

In January 2000, at the request of Total International Limited (Total) which had owned the cargo onboard the *Erika* and Total's insurers and other interested parties, the Commercial Court in Dunkirk established a panel of experts to investigate the circumstances and the cause of the incident and to re-construct the process of the break up of the internal structures of the *Erika*. The panel consisted of four maritime experts assisted by a specialist in naval architecture and classification society procedures, a specialist in metallurgy and a number of technicians at the Institute of Welding (L'Institut de soudures) in Paris who had been consulted in relation to structural studies and calculations.

The panel submitted its report in November 2005. In the report the experts expressed the opinion that the *Erika*'s internal structures had been in conformity with the 1973 rules of Nippon Kaiji Kyokai, the classification society that had monitored the ship while being built. Based on documentation provided by RINA, they confirmed that the ship's internal structures had been in conformity with RINA's

classification rules as applicable in 1998 but that based on the measurements and calculations conducted on the wreck and on steel fragments retrieved from the wreck, the thickness of the steel structures of the *Erika* when RINA took over the ship had been below the permissible limits.

The experts also concluded that, although there had been a high level of corrosion of the deck plating, the original cause of the break-up was not the buckling of the main deck. The process of breaking up of the *Erika* was summarised by the experts as follows:

- The internal structures supporting the shell plating adjacent to number 2 starboard ballast tank and the longitudinal bulkhead between number 3 centre cargo tank and number 2 starboard ballast tank that were badly corroded developed cracks. The cracks on the shell plating were below the water line and allowed seawater to gain ingress into the number 2 starboard ballast tank. This flooding was coupled with the flow of cargo from number 3 centre tank into number 2 starboard ballast tank.
- The flooding led to the deterioration of the internal structures in number 2 starboard ballast tank including the detachment of a section of the shell plating adjacent to the ballast tank. This allowed an increase in the rate of flooding of the tank which contributed to the excessive hydrodynamic stresses on the remaining internal structures in the ballast tank.
- These excessive stresses, in addition to the bending moments created by the swell, caused the *Erika* to fold outwards resulting in the buckling of the deck plating in this area and the breaking of the ship's bottom. This caused the bow and stern sections to separate.

In the experts' view the master and the crew had dealt with this situation in a professional manner and that even if the master had been able to comprehend fully the situation that had been developing, it would not have had any impact on the unfolding of the events which had led to the loss of the ship. They also noted that during the course of the incident, the master had complied with the shipboard oil pollution emergency plan except in two respects, namely failure to inform the French authorities that oil was being spilled from the *Erika* and failure to make contact with the technical adviser of RINA.

As regards Total SA, the experts expressed the view that neither at the time of chartering nor during the vetting inspection it would have been possible for Total SA to detect the state of corrosion of the internal structures of the *Erika*.

The experts also stated that Panship as the technical manager of the *Erika*, which had determined and supervised repairs carried out during the summer of 1998, would have been aware of the deterioration of the internal structures identified in their report. They further stated that RINA, as the classification society, would also have been aware of the deterioration as it had been responsible for checking the work that had been carried out in accordance with its classification rules. The experts also suggested that RINA had not followed the normal procedures for the issue of classification certificates in respect of the annual survey in August/November 1999.

The experts also concluded that the parties which had responded to the casualty had not been in a position to influence the fate of the *Erika*. They were of the opinion that, based on the condition of the internal structures of the ship when it had departed from Dunkirk, the *Erika* had been destined to break up considering the heavy weather at the time.

## Recourse actions taken by the 1992 Fund

Although it is not possible for the 1992 Fund to take a final position as to whether the Fund should take recourse actions to recover the amounts paid by it in compensation and, if so, against which parties, until the investigations into the cause of the incident have been completed, the Executive Committee considered in October 2002 whether the Fund should take such actions as were necessary to prevent its

rights becoming time-barred. The Committee decided that the 1992 Fund should challenge the shipowner's right to limit his liability under the 1992 Civil Liability Convention and that it should take recourse actions, as a protective measure before the expiry of the three-year time-bar period, against the following parties:

- Tevere Shipping Co Ltd (registered owner of the *Erika*)
- Steamship Mutual (liability insurer of the *Erika*)
- Panship Management and Services Srl (manager of the *Erika*)
- Selmont International Inc (time charterer of the *Erika*)
- TotalFinaElf SA (holding company)
- Total Raffinage Distribution SA (shipper)
- Total International Ltd (seller of cargo)
- Total Transport Corporation (voyage charterer of the *Erika*)
- RINA Spa/Registro Italiano Navale (classification society)

On 11 December 2002 the 1992 Fund brought actions in the Civil Court (Tribunal de Grande Instance) in Lorient against the parties listed above.

After the Committee's October 2002 session the Fund was made aware of the fact that the classification society Bureau Veritas had inspected the *Erika* prior to the transfer of class to RINA. The Fund then took recourse action, as a protective measure, against Bureau Veritas, in the Civil Court in Lorient on 11 December 2002.

There have been no developments in respect of these actions during 2006. The 1992 Fund has informed the Court that it will consider further steps as regards these actions when the criminal trial has been terminated.

As mentioned above, criminal charges were brought against *inter alia* the deputy manager of CROSS and three officers of the French Navy. If they were to be found guilty there might be grounds for the 1992 Fund to take recourse action against the French State, but it is not possible for the 1992 Fund to decide whether there are grounds for such an action until the trial in the criminal proceedings has taken place.

Under French law the general time-bar period in commercial matters is – subject to many exceptions – 10 years. In matters involving the liability of public bodies, in order to prevent a claim for compensation becoming time-barred, the French Administration should be notified of such a claim by 31 December of the fourth year after the event that gave rise to a claim, ie in the case of the *Erika* incident by 31 December 2003. The 1992 Fund made such a notification in December 2003 and the French State accepted that this notification had the effect of interrupting the time bar.

The Executive Committee examined the report by the panel of experts in October 2006. The Committee noted that on the basis of the reports by the Malta Maritime Authority and the French Permanent Commission of Enquiry into Accidents at Sea, and in particular the report of the panel of experts appointed by the Commercial Court in Dunkirk, the 1992 Fund would probably have grounds for pursuing the recourse actions it commenced in 2002 against some of the parties against which such actions had been taken, whereas there appeared to be no such grounds for pursuing recourse actions against others.

The Committee noted, however, that during the criminal proceedings before the Criminal Court in Paris, new evidence may come to light which could be important for the Fund in its decisions relating to recourse actions. Based on these considerations, the Committee decided, as proposed by the Director, to defer its decision as to whether to pursue recourse actions against all or some of those parties.

## Legal proceedings

The Conseil Général of Vendée and a number of other public and private bodies brought actions in various courts against the shipowner, Steamship Mutual, companies in the Group Total SA and others requesting that the defendants should be held jointly and severally

liable for any claims not covered by the 1992 Civil Liability Convention. The 1992 Fund requested to be allowed to intervene in the proceedings. So far only procedural hearings have been held.

The French State brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the limitation fund referred to above and the 1992 Fund, claiming €190.5 million (£128 million).

Four companies in the Group Total SA took legal actions in the Commercial Court in Rennes against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£96 million).

Steamship Mutual brought action in the Commercial Court in Rennes against the 1992 Fund, requesting the Court *inter alia* to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£8.6 million) corresponding to the limitation amount applicable to the shipowner, in agreement with the 1992 Fund and its Executive Committee. Steamship Mutual further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual also requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer will have paid in excess of the limitation amount.

Claims totalling €497 million (£335 million) were lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and Total SA. However, most of these claims, other than those of the French Government and Total SA, have been settled and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage.

The 1992 Fund received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

Due to some disturbances by an individual during all hearings relating to the *Erika* incident in the Commercial Court in Rennes, all judges of that Court decided in January 2006 that they would no longer deal with any proceedings concerning that incident. This decision applies to 10 actions involving 63 claimants, including the actions against the 1992 Fund and the limitation fund, and the proceedings relating to the shipowner's limitation fund. The President of the Court of Appeal in Rennes decided on 12 January 2006 to transfer the actions and proceedings from the Commercial Court in Rennes to the Commercial Court in Saint-Brieuc. The Court in Saint-Brieuc accepted to deal with these actions and proceedings.

Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 31 December 2006 out-of-court settlements had been reached with 440 of these claimants. The courts had rendered judgements in respect of 89 claims. Actions by 307 claimants (including 144 salt producers) were pending. The total amount claimed in the pending actions, excluding the claims by the French State and Total SA, was €59.8 million (£40 million).

The 1992 Fund will continue the discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

## Court judgements in respect of claims against the 1992 Fund

During 2006, 26 judgements were rendered in various French courts, the majority of which were in favour of the 1992 Fund. These judgements related mainly to issues of admissibility in respect of claims for loss of earnings suffered by persons whose property had not been polluted (so called pure economic loss).

As mentioned in Section 12.2 the governing bodies of the 1971 and 1992 Funds have adopted criteria for the admissibility of claims.

As regards claims for pure economic loss these criteria can be summarised as follows.

Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.

To qualify for compensation for pure economic loss, there must be a sufficiently close link of causation between the contamination and the loss or damage sustained by the claimant. A claim is not admissible for the sole reason that the loss or damage would not have occurred had the oil spill not happened. When considering whether such a close link exists account is taken of the following factors:

- the geographic proximity between the claimant's business activity and the contaminated area
- the degree to which a claimant was economically dependent on an affected resource
- the extent to which a claimant's business had alternative sources of supply or business opportunities
- the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill

The 1992 Fund also takes into account the extent to which a claimant was able to mitigate his loss.

As regards the tourism sector, a distinction is made between a) claimants who sell goods or services directly to tourists and whose businesses are directly affected by a reduction in visitors to the area affected by an oil spill, and b) those who provide goods or services to other businesses in the tourist industry, but not directly to tourists. It is considered that in this second category there is generally not a sufficiently close link of causation between the contamination and the losses allegedly suffered by claimants. Claims of this type will therefore normally not qualify for compensation in principle.

The assessment of a claim for pure economic loss is based on a comparison between the actual financial results of the individual claimant during the claim period and those for previous periods. The assessment is not based on budgeted figures. The particular circumstances of the claimant are taken into account and any evidence presented is considered. The criterion is whether the claimant's business as a whole has suffered economic loss as a result of the contamination.

Any saved overheads or other normal expenses not incurred as a result of the incident should be deducted from the loss in revenue suffered by the claimant.

Some courts applied the 1992 Fund's admissibility criteria, some others made the point that the criteria were not binding on the courts but provided a useful reference and others ignored the criteria but generally reached the same conclusion as they would have reached on the basis of the criteria. In four cases in which the judgements in the Court of first instance had gone against the Fund, the Court of Appeal overturned these judgements. In some cases, the courts agreed with the Fund's assessment of the losses or assessed the losses at amounts very close to the Fund's assessments although these were significantly lower than the amounts claimed.

The Fund has lodged appeals against eight judgements and eight claimants have lodged appeals.

All judgements rendered in respect of claims against the 1992 Fund in 2006 are reported in documents submitted to the Executive Committee which are available on the IOPC Funds' website (www.iopcfund.org).


*Area affected by the Erika incident*

Summaries of some judgements rendered in 2006 that are of particular interest because of the issues addressed or the statements made by the court are summarised below.[10]

As to judgements rendered before 1 January 2006, reference is made to the Annual Reports 2003, 2004 and 2005.

## Judgements by the Court of Appeal in Rennes

**Fisherman and local fishermen's union**

A fisherman, having accepted the assessment of his claim by the 1992 Fund and received two provisional payments and signed full and final releases, subsequently brought legal action against the Fund arguing that the agreement reached with the Fund was not valid and claimed additional compensation. A local fishermen's union joined in these legal proceedings supporting the claimant, who was one of its members, and although the union did not make a specific claim for loss or damage caused by the *Erika*, it claimed a symbolic amount of €1 (£0.70) for non-defined damages.

In a judgement rendered in March 2005 the Commercial Court in Rennes rejected the claim by the individual claimant on the grounds that, having signed a full and final receipt and release, the claimant had accepted the terms of the proposed agreement and had entered into a valid settlement according to French law. The Court found that the claimant's union had not suffered any damage falling within the scope of the 1992 Civil Liability and Fund Conventions and the claim was therefore inadmissible. The Court also stated that the actions of the individual claimant and the union were excessive and ordered them to pay a symbolic amount of €1 each to the shipowner, Steamship Mutual and the Fund.

The individual claimant and the union appealed against the judgement.

In May 2006 the Court of Appeal in Rennes confirmed the judgement of the Commercial



[10] *The judgements were also rendered against the shipowner and Steamship Mutual. In order not to burden the text reference is made only to the 1992 Fund.*

Court with regard to the individual claimant on the grounds that, having signed a full and final receipt and release agreement, the claimant had lost his right to sue the 1992 Fund. The Court considered that the 1992 Fund, having provided compensation for pollution damage caused by the *Erika* on an amicable basis, avoided the need for the claimant to be involved in a lengthy and expensive litigation and also acted according to the requirements of French law. The Court of Appeal also considered that if the claimant had agreed to the amicable settlement at the time, it was because he had found it convenient to do so, and his opposition two years later was to be considered too late and invalid.

As regards the fishermen's union, the Court of Appeal stated that the legal action by the union was admissible, since any trade union could be party to legal proceedings to defend the general interests of the members of the profession it represented. The Court recognised the right of the union to question in general terms the processes and modalities of compensation of fishermen and others deriving their income from the sea, but that it should not deal with individual losses suffered by the victims of the pollution. The Court dismissed the union's claim since it was not well founded.

The fisherman and the claimant's union have appealed against the Court of Appeal's judgement before the Court of Cassation.

**Wholesaler supplying bottled drinks**

A wholesale business operating from various locations in Brittany supplying bottled drinks to cafés, hotels and campsites (but not directly to tourists), not only in the area affected by the *Erika* oil spill but also in other areas, submitted a claim for loss of revenue for €609 455 (£410 000). The Fund rejected the claim on the grounds that it was a 'second degree' tourism claim. In a judgement rendered in November 2004 the Commercial Court in Vannes upheld the Fund's position, holding that the claimant had failed to show that the reduced turnover was due to the pollution resulting from the *Erika* incident. The claimant appealed against the judgement.

In a judgement rendered in June 2006 the Court of Appeal in Rennes rejected the appeal. The Court stated that although the 1992 Fund's criteria were not binding on national courts, the Court could use them as a source of inspiration. The Court held that many of the claimant's clients, such as hospitals, military barracks and local authorities, were not affected by the contamination caused by the *Erika* incident and that the losses allegedly suffered by the claimant were of an indirect character since the difficulties experienced by the claimant in supplying bottled drinks to his clients could not be considered with certainty as a direct consequence of the contamination but could have resulted from other factors such as the weather conditions, location and the profitability of the local market.

The claimant has lodged an appeal before the Court of Cassation.

**Campsite operator**

The operator of a campsite in Côtes d'Armor, which is located in the northern part of Brittany, submitted a claim for €23 195 (£15 600) in respect of losses suffered during 2000. The claimant also submitted a claim for €33 265 (£22 400) in respect of losses in 2001. The claim for losses in 2000 was settled at €15 883 (£10 700) and that amount was paid to the claimant by the 1992 Fund in December 2002. The 1992 Fund, however, rejected the claim for losses during 2001 since, with a few exceptions, there was no remaining contamination on the beaches in Brittany after the end of the 2000 season. The claimant brought proceedings against the Fund.

In a judgement rendered in September 2004 the Commercial Court in Saint Brieuc held that the claim was admissible since it considered that the reduction in turnover in 2001 compared to 1999 was caused by the *Erika* incident and ordered the 1992 Fund to pay compensation of €26 719 (£18 000). The 1992 Fund appealed against this judgement.

In a judgement rendered in June 2006 the Court of Appeal in Rennes rejected the claim. The Court stated that it had not been demonstrated

that the *Erika* incident, which took place in December 1999, had had a negative impact on tourism activity during 2001 and that other factors such as the weather, the reduction in working hours in France, the competition from other tourism destinations, were reasons why in 2001 certain tourism businesses had not returned to the level of commercial activity existing prior to the incident.

The claimant did not appeal against the judgement.

**Cancellation of millennium party**

An insurer had made a subrogated claim against the 1992 Fund for €630 000 (£425 000) in respect of a claim it had paid to a group of hotels in La Baule for losses incurred as a result of the cancellation of a major millennium party which was to have taken place on the local beach. This payment had been made pursuant to an insurance policy covering costs incurred in organising the cancelled party. The Mayor of La Baule had issued a decree on 27 December 1999 prohibiting all access to the beaches, as a result of which the party had to be cancelled.

The 1992 Fund rejected the claim on the grounds that the claimant had not submitted sufficient information to enable the Fund to assess the losses and that the insurer had not taken into account the income received by the hotels for the period of the millennium festivities, which should have been deducted from the amount claimed for losses due to the cancellation of the event.

In a judgement rendered in December 2004 the Court estimated the income over the period of the millennium festivities at €200 000 (£135 000). The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay the insurer the balance of €430 000 (£290 000).

The 1992 Fund appealed against this judgement.

In November 2006 the Court of Appeal in Rennes overturned the judgement by the Commercial Court and rejected the claim. It stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund but that they could provide a useful point of reference for national courts. The Court referred to the fact that the decision by the Municipal Council of La Baule in December 1999, before the oil spill occurred, to reduce the permitted area of the marquees under which the festivities were to be held from 1 400 $m^2$ to 800 $m^2$, which had reduced by some 50% the potential income from the festivities had made them non-profitable. The Court also stated that the severe storm which occurred on 26 and 27 December 1999 had made it impossible to erect the marquees and that the storm had caused damage to the roof of the hotel in front of which the festivities were to take place which had constituted a risk to participants in the festivities. The Court considered it evident that, due to the damage caused by the storm, the festivities could not have been held on that beach for safety reasons. The Court held that, although in the mayor's decision to prohibit access to the beach reference was made to the oil on the beach, this did not in itself constitute an obstacle to holding the festivities under the marquees and the fact that the marquees could not be erected was due to the storm. In the Court's view, the decision to cancel the festivities was due to the storm and not to the pollution. The Court of Appeal therefore considered that there was no link of causation between the cancellation of the festivities and the *Erika* incident and that the insurer had not established any direct and certain relationship between his obligation to indemnify the hotel group and the *Erika* incident.

As at 31 December 2006, the claimant had not lodged an appeal before the Court of Cassation but the period for filing such an appeal expires only in February 2007.

## Judgements by Courts of first instance

**Camping sites**

In April 2006 the Commercial Court in La Roche sur Yon rendered a judgement in respect of a claim relating to loss of income allegedly suffered due to a reduction in turnover resulting from the *Erika* incident submitted by a company managing a camping site based in Saint-Jean-de-Monts.

The Court stated that the losses suffered by the claimant had been assessed by the Fund following the criteria established by the Fund summarised in a Manual, but that the criteria could not be considered to constitute agreements between the parties in the sense of Article 31.3 of the Vienna Convention on the Law of Treaties, and that the Resolution of the 1992 Fund's Administrative Council of May 2003, according to which 'the Courts of the States Parties to the 1992 Conventions should take into account the decisions made by the governing bodies of the Fund...' did not have a binding effect but corresponded to an expression of a wish. In the judgement the Court also stated that it was for the competent court to interpret the concept of 'pollution damage' and to apply it to the particular case in order to verify whether there was a sufficient link of causation between the event and the damage and to determine the extent of that damage. However, the Court agreed with the Fund's assessment and rejected the claim.

The claimant did not appeal against the judgement.

**Wholesaler of beach toys, oyster producer, bar hotel and restaurant, foods and drinks wholesaler, frozen foods wholesaler and clothes retailer**

In February and March 2006 the Commercial Court in Lorient issued six judgements in respect of claims by a wholesaler of beach toys and camping equipment, an oyster producer, an owner of a hotel, bar and restaurant, a food and drinks wholesaler, a frozen food wholesaler and a clothes retailer. The Court stated in each case that it was not bound by the Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event and the damage.

Three of these claims had been rejected by the 1992 Fund on the grounds that there was not a sufficient link of causation between the alleged loss and the oil pollution. The Court agreed with the Fund and rejected the claims. With regard to two claims which had been accepted by the Fund as admissible in principle but assessed at amounts lower than those claimed, the Court agreed with the Fund's assessments.

In respect of the frozen food wholesaler's claim, which had been rejected by the Fund on the grounds of lack of sufficient link of causation, the Court stated that the relevant facts had not been established and therefore appointed a court expert to determine the amount of the losses and whether the losses resulted directly from the *Erika* incident.

The claimants did not appeal against the judgements.

## 15.4 AL JAZIAH 1

*(United Arab Emirates, 24 January 2000)*

See pages 74-76.

## 15.5 SLOPS

*(Greece, 15 June 2000)*

### The incident

The Greek-registered waste oil reception facility *Slops* (10 815 GT) laden with some 5 000 $m^3$ of oily water, of which 1 000–2 000 $m^3$ was believed to be oil, suffered an explosion and caught fire at an anchorage in the port of Piraeus (Greece). An unknown but substantial quantity of oil was spilled from the *Slops*, some of which burned in the ensuing fire.

The *Slops* had no liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

Port berths, dry docks and repair yards to the north of the anchorage were impacted before the oil moved southwards, out of the port area, and stranded on a number of islands. A local

contractor carried out clean-up operations at sea and on shore.

## Applicability of the 1992 Civil Liability Convention and the 1992 Fund Convention

The *Slops*, which was registered with the Piraeus Ships' Registry in 1994, was originally designed and constructed for the carriage of oil in bulk as cargo. In 1995 it underwent a major conversion in the course of which its propeller was removed and its engine was deactivated and officially sealed. It was indicated that the purpose of the sealing of the engine and the removal of the propeller had been to convert the status of the craft from a ship to a floating oily waste receiving and processing facility. Since the conversion the *Slops* appeared to have remained permanently at anchor at its present location and had been used exclusively as a waste oil storage and processing unit. The local Port Authority confirmed that the *Slops* had been permanently at anchor since May 1995 without propulsive equipment. It was understood that the oil residues recovered from the processed slops were sold as low-grade fuel oil.

In July 2000 the Executive Committee considered the question of whether the *Slops* fell within the definition of 'ship' under the 1992 Civil Liability Convention and the 1992 Fund Convention. The Committee recalled that the 1992 Fund Assembly had decided that offshore craft, namely floating storage units (FSUs) and floating production, storage and offloading units (FPSOs), should be regarded as ships only when they carried oil as cargo on a voyage to or from a port or terminal outside the oil field in which they normally operated. The Committee noted that this decision had been taken on the basis of the conclusions of an intersessional Working Group that had been set up by the Assembly to study this issue. The Committee also noted that although the Working Group had mainly considered the applicability of the 1992 Conventions in respect of craft in the offshore oil industry, there was no significant difference between the storage and processing of crude oil in the offshore industry and the storage and processing of waste oils derived from shipping. It was further noted that the Working Group had taken the view that in order to be regarded as a 'ship' under the 1992 Conventions, an offshore craft should *inter alia* have persistent oil on board as cargo or as bunkers.

A number of delegations expressed the view that since the *Slops* had not been engaged in the carriage of oil in bulk as cargo it could not be regarded as a 'ship' for the purpose of the 1992 Conventions. One delegation pointed out that this was supported by the fact that the Greek authorities had exempted the craft from the need to carry liability insurance in accordance with Article VII.1 of the 1992 Civil Liability Convention.

The Committee decided that, for the reasons set out above, the *Slops* should not be considered as a 'ship' for the purpose of the 1992 Civil Liability Convention and 1992 Fund Convention and that therefore these Conventions did not apply to this incident.

## Legal actions

**Proceedings before the Court of first instance**

In February 2002 two Greek companies took legal actions in the Court of first instance in Piraeus against the registered owner of the *Slops* and the 1992 Fund claiming compensation for costs of clean-up operations and preventive measures for €1.5 million (£1 million) and €787 000 (£530 000) (plus interest), respectively. The companies alleged that they had been instructed by the owner of the *Slops* to carry out clean-up operations and to take preventive measures in response to the oil spill. The companies stated that they had requested the owner of the *Slops* to pay the above-mentioned costs but that he had failed to do so.

In their pleadings the companies stated that the *Slops* had been constructed exclusively to carry oil by sea (ie had been constructed as a tanker), that it had a nationality certificate as a vessel and that it was still registered as a tanker with the Piraeus Ships' Registry. They also maintained that even when the *Slops* operated as an oil separation unit (a slops handling unit), it floated at sea and its only purpose was to carry oil in its

hull. They mentioned that the *Slops* did not have any liability insurance under the 1992 Civil Liability Convention. The companies stated that the registered owner had no assets apart from the *Slops*, which had been destroyed by fire and did not even have scrap value. They argued that they had taken all reasonable measures against the owner of the *Slops*, namely legal action against the owner, investigation into the owner's financial situation, requesting the Court to arrest the assets belonging to the owner and to declare the owner bankrupt. They maintained that, since the owner was manifestly incapable of satisfying their claims, they were entitled to compensation for their costs from the 1992 Fund.

The Court rendered its judgements on the actions in December 2002.

As regards the actions against the registered owner of the *Slops*, who did not appear at the court hearing, the Court rendered a default judgement against him for the amounts claimed plus interest.

Concerning the actions against the 1992 Fund, the Court held in its judgement that the *Slops* fell within the definition of 'ship' laid down in the 1992 Civil Liability Convention and the 1992 Fund Convention. In the Court's opinion, any type of floating unit originally constructed as a sea-going vessel for the purpose of carrying oil was and remained a ship, although it might subsequently be converted into another type of floating unit, such as a floating oil waste receiving and processing facility, and notwithstanding that it might be stationary or that the engine might have been temporarily sealed or the propeller removed. The Court ordered the 1992 Fund to pay the companies €1.5 million (£1 million) and €787 000 (£530 000) respectively, ie the amounts claimed, plus legal interest from the date of service of the writ (12 February 2002) to the date of payment, and costs of €93 000 (£63 000).

**Proceedings before the Court of Appeal**

In February 2003 the 1992 Fund Executive Committee considered the question of whether the Fund should appeal against the judgement. During the discussion a number of delegations pointed out that the decision by the Executive Committee that the *Slops* should not be considered a 'ship' for the purposes of the 1992 Conventions was based on a policy decision by the 1992 Fund Assembly regarding the conditions under which floating storage units should be considered a 'ship' for the purpose of the Conventions, namely only when they were carrying oil in bulk, which implied that they were on a voyage. Those delegations referred to the preamble to the Conventions, which specifically referred to the transportation of oil. The Executive Committee decided that the 1992 Fund should appeal against the judgement.

In its appeal the 1992 Fund argued that the Court of first instance had erroneously considered that the *Slops* had been carrying oil at the time of the incident, regarding the mere existence on board of oil residues as 'carriage', ie transportation. It also argued that although the Court had considered that the 2 000 $m^3$ of oil on board had been carried in the sense that it had been intended to be transported to the oil refineries, there was no evidence that this would have been the case. The Fund drew attention to a document issued by the Ministry of Merchant Marine proving beyond doubt that the *Slops*, which had constituted a floating industrial unit for the processing of oil residues and separating them from water, had operated continuously as such a unit from 2 May 1995 and had been permanently anchored since that date without any propulsion equipment. The Fund maintained that the *Slops* had not been intended to carry oil residues by sea to oil refineries and had never carried out such operations during the time it had served as a floating oil residue processing facility, such carriage having been performed by the use of barges owned by third parties, which had gone alongside the *Slops* to receive the oil residues and transported them to the refineries for further processing. The Fund further argued that the *Slops* had not had the liability insurance required under Article VII.1 of the 1992 Civil Liability Convention and that this requirement had never been imposed by the Greek authorities upon the *Slops*. It was pointed

*The Slops was a floating oil reception facility which suffered a fire and explosion in the port of Piraeus, Greece, in 2000*

out that the Greek authorities were obliged under Article VII.10 not to permit a vessel flying the Greek flag to carry out commercial activities without such a certificate of insurance. The Fund concluded that in view of these facts, the *Slops* could not be considered to fall within the definition of 'ship' in the 1992 Conventions.

At a hearing in November 2003 the claimants argued that any type of marine craft which by construction was intended to carry oil was considered to be a ship, notwithstanding that it had subsequently undergone conversion, that temporarily its engine had been sealed and its propeller removed. They also argued that the fact that the *Slops* was registered at the Piraeus Ships' Registry proved that it was a ship. The claimants maintained that the word 'cargo' was not indicative of the alleged requirement for the ship to be actually carrying oil, as the word was used to distinguish between oil carried as cargo and oil in the ship's tanks. The claimants argued that at the time of the incident the *Slops* actually had had waste residue remaining on board from its last journey as a tanker in 1995. The point was made that the existence of insurance was not a condition for the *Slops* to be considered a ship. It was further stated that the United Nations Convention on the Law of the Sea, the principal objective of which was the protection of the marine environment, provided a framework for the 1969 Civil Liability Convention calling for an interpretation compatible with this principal objective. It was argued by the claimants that they had become aware of the registered owner's poor financial state after the clean-up work had progressed considerably and that in any case they could have been accused of contributing to the damage to the environment had they not completed the clean-up operations. The claimants also argued that the fact that the 1992 Fund had arranged for two technical experts to travel to Greece and to report on the incident had led them to believe that the 1992 Fund was prepared to grant compensation.

The 1992 Fund drew the Court's attention to Resolution N°8 adopted in May 2003 by the Administrative Council in which the Council expressed the view that the courts of States

Parties to the 1992 Conventions should take into account the decisions of the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of the Conventions.

The Court of Appeal rendered its judgement in February 2004. The Court held that the *Slops* did not meet the criteria required by the 1992 Civil Liability Convention and the 1992 Fund Convention and rejected the claims. The Court interpreted the word 'ship' as defined in Article I.1 of the 1992 Civil Liability Convention as a seaborne unit which carried oil from place A to place B.

The Court of Appeal took into consideration evidence submitted by the Fund, which clearly showed that, at the time of the incident, the *Slops* had not operated as a seagoing vessel or a floating unit for the purpose of transporting persistent oil in its tanks. The Court accepted the Fund's position that the *Slops*, which had originally been built as a tanker, had performed its last voyage as an oil-carrying vessel in 1994. The Court also noted that the *Slops* had been subsequently sold to Greek interests, who had converted it into a floating waste oil storage and processing unit and to this effect had removed its propeller and sealed its engine and that the Piraeus Central Port Authority had confirmed that the *Slops* had remained permanently at anchor since May 1995 without propulsive equipment. The Court also referred to the fact that the relevant Greek authorities had not required that the *Slops* be insured in accordance with Article VII.1 of the 1992 Civil Liability Convention and that this also indicated that the *Slops* could not be considered as a 'ship' under the 1992 Conventions.

**Proceedings before the Supreme Court**

The claimants appealed to the Supreme Court.

In the pleadings before the Supreme Court, the claimants maintained that the Court of Appeal had made an incorrect interpretation of the definition of 'ship' in the 1992 Civil Liability Convention. In the claimant's view, it was clear that the wording of the definition and its purpose was not only to prevent pollution but also to compensate victims of oil pollution and those who contribute to prevention of such pollution.

The claimants further maintained that the definition of 'ship' covered also a craft which by its construction was designed to carry oil and which at the time of the incident did not perform voyages and (for a brief or longer period of time) was stationary, operating as a receiving and separating unit for oil or oily residues and carrying oil in its cargo tanks. This was in the claimant's view particularly so when the craft had oily residues from the carriage on board and constituted a high risk of causing pollution in vital areas such as ports. The claimants also maintained that the Court of Appeal had considered an issue that was not pleaded, holding that it could not support the view that there were oil residues from the *Slops*' last voyage at the time of the incident. They also argued that the definition of 'ship' introduced a rebuttable presumption that there were residues on board, but that the Fund had not rebutted this presumption.

In their pleadings to the Supreme Court, the claimants suggested that the Court of Appeal judgement lacked proper legal foundation and contained insufficient reasoning.

The 1992 Fund submitted pleadings to the Supreme Court in May 2005 maintaining that the Court of Appeal had interpreted the definition of 'ship' correctly and that the appeal should be dismissed. In its pleadings before the Supreme Court the Fund put forward largely the same arguments as in the Court of Appeal. The Fund reiterated the point made to the Court of Appeal that it was not possible that the residues from previous voyages had remained onboard in view of the fact that the *Slops* had been converted to a floating oil recovery facility. The Fund also maintained that in any event the alleged rebuttable presumption would not apply in this case. In addition, the Fund drew the Supreme Court's attention to the above-mentioned Resolution N°8.

The 1992 Fund submitted an expert opinion by Dr Thomas Mensah[11] to the Supreme Court in support of its position. In his opinion, Dr Mensah concluded that there was no basis, either in the provisions and terms of the 1992 Civil Liability Convention and the 1992 Fund Convention or in international maritime law or in the rules and principles of international law concerning the interpretation and application of treaties, for suggesting that the *Slops* could be considered as a 'ship' in relation to the incident. He expressed the view that at the time of the incident the *Slops* did not meet any of the requirements for a ship as defined in the 1992 Civil Liability Convention because it was not 'a seagoing vessel and seaborne craft… constructed or adapted for the carriage of oil in bulk as cargo' nor was it a ship that was 'actually carrying oil in bulk as cargo' or on 'any voyage following such carriage'. Consequently, in his view, pollution damage resulting from the incident could not be considered as falling within the scope of application of the 1992 Civil Liability Convention. He stated that it followed, therefore, that there could be no obligation on the part of the 1992 Fund to compensate for such pollution damage.

In September 2005 the five Supreme Court judges who heard the case concluded that the question as to whether or not the Court of Appeal had correctly interpreted and applied Article I.1 of the 1992 Civil Liability Convention should be referred to a plenary session of the Supreme Court. Under the Greek Code of Civil Procedure, in order for a judgement by a Division of the Supreme Court to be conclusive and binding, the judgement must be decided by a majority of more than one vote. It appeared that three judges had been in favour of the claimants and two had been in favour of the 1992 Fund. The Supreme Court rejected the other grounds of the appeal put forward by the claimants.

**Proceedings before the Plenary Session of the Supreme Court**

The plenary session was held in May 2006, at which the Supreme Court was composed of 22 judges who had been chosen randomly. At the plenary session the Court only considered the issue of the interpretation and application of Article I.1 of the 1992 Civil Liability Convention.

In accordance with the rules of procedure of the Supreme Court, the Attorney General of the Supreme Court attended the session and made recommendations to the Court. The Attorney General concurred with the findings of the two dissenting judges in the Supreme Court that the *Slops* should not be considered a 'ship' as defined in the 1992 Conventions and proposed the dismissal of the appeal as being unfounded.

The Supreme Court issued its judgement in June 2006. In the judgement, the majority of the judges (17:5) expressed the opinion that the provisions on the definition of ship in the 1992 Conventions appeared to describe two types of 'ships', namely: a) the type which was defined as 'any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo', and b) the type which was defined as 'a ship capable of carrying oil in bulk and other cargoes…', in other words 'combination cargo' ships. Moreover, relying principally on the grammatical phraseology used in defining a ship in the 1992 Conventions, the majority of the judges concluded that the proviso referred only to combination cargo ships, ie those ships which were 'capable of carrying oil in bulk and other cargoes', rather than all ships in general, and that consequently there was no requirement for ships in the first category (tankers and seaborne craft) to be actually carrying oil in bulk as cargo in order to be characterised as a ship. In the view of the majority of the judges in order to fall within the definition of 'ship' it was sufficient for tankers and seaborne craft to have the capability of movement by self-propulsion or by way of towage, as well as the ability to carry oil in bulk as cargo, without it being necessary for the incident to have occurred during the carriage of oil in bulk as cargo, ie during the voyage.

Five judges were of the opinion that in order to be regarded a 'ship' as defined in the



[11] *Former Assistant Secretary-General of the International Maritime Organization, former President of the International Tribunal for the Law of the Sea in Hamburg (Germany).*

1992 Conventions, the craft must have been constructed or adapted for the carriage of oil in bulk as cargo with an additional condition that if it was a floating storage unit, it must actually be carrying oil in bulk as cargo during the voyage in question or during a voyage immediately following the discharge of that oil, unless it was proven that following such unloading there were no oil residues in the vessel's tanks. The dissenting judges also stated that this interpretation resulted from the aim of the international Conventions, which referred to the carriage of oil in bulk as cargo.

The majority of the judges held that the Court of Appeal had contravened the substantive law provisions of the 1992 Conventions pertaining to the definition of 'ship'. Consequently, the majority held that at the time of the incident, the *Slops* should be regarded a 'ship' as defined in the 1992 Conventions as it had the character of a seaborne craft which, following its modification into a floating separating unit, stored oil products in bulk and, furthermore, it had the ability to move by towing with a consequent pollution risk without it being necessary for the incident to take place during the carriage of the oil in bulk.

The Supreme Court, having decided that the 1992 Conventions were applicable to the incident, held that the Court of Appeal's judgement should be set aside and the case be referred back to that Court to examine the merits of the substance of the dispute ie the quantum of the claim, etc.

**Assessment of the quantum**

As regards the two claims for the cost of clean-up and preventive measures, the experts engaged by the 1992 Fund have examined the original documentation submitted with the claimants' writs, in order to assess the admissible quantum. This documentation is insufficient to complete a detailed assessment of the claims and further information has been requested from the claimants.

## 15.6 INCIDENT IN SWEDEN

*(Sweden, 23 September 2000)*

### The incident

Between 23 September and early October 2000 persistent oil landed on the shores of Fårö and Gotska sandön, two islands to the north of Gotland in the Baltic Sea, and thereafter on several islands in the Stockholm archipelago. The Swedish Coastguard, the Swedish Rescue Service Agency and local authorities undertook clean-up operations, which resulted in the collection of some 20 $m^3$ of oil from the sea and from the shore.

Investigations by the Swedish authorities indicated that the oil could have been discharged within the Swedish Exclusive Economic Zone to the east of Gotland, possibly from the Maltese tanker *Alambra*, which had passed the area at the assumed time of the oil spill on a ballast voyage to Tallinn (Estonia). According to the Coastguard, analyses of oil samples from the polluted islands matched those of samples taken from the *Alambra*.

The *Alambra* was insured by the London Steam-Ship Owners' Mutual Insurance Association Ltd (London Club). The shipowner and the insurer maintained that the oil did not originate from the *Alambra*.

### Limitation of liability

The limitation amount applicable to the *Alambra* under the 1992 Civil Liability Convention is 32 684 760 SDR (£25 million).

### Claims for compensation

The Coastguard incurred costs in respect of clean-up operations totalling SEK 1.1 million (£82 000). The Rescue Service Agency, together with local authorities, incurred clean-up costs totalling SEK 4.1 million (£306 000). The aggregate amount of the claims would therefore fall well below the limitation amount applicable to the *Alambra*.

The Swedish authorities informed the 1992 Fund that they intended to submit their claims for compensation to the shipowner. The

authorities further indicated that if they were to be unsuccessful in obtaining compensation from the shipowner, they would consider claiming against the Fund. However, in order to be able to obtain compensation from the 1992 Fund, the authorities would have to prove that the damage resulted from an incident involving a ship as defined in the 1992 Civil Liability Convention.

The Swedish authorities made available to the 1992 Fund the results of analyses carried out by the Swedish Forensic Laboratory of samples of oil carried on board the *Alambra* and of samples of oil found on several Swedish islands. The Fund examined the results of the analyses and concurred with the conclusion of the authorities that the pollution samples closely matched those taken from the *Alambra*.

### Legal actions against the shipowner/Club and the Fund

In September 2003 the Swedish Government took legal action in the Stockholm District Court against the shipowner and the London Club maintaining that the oil in question originated from the *Alambra* and claiming compensation of SEK 5.3 million (£393 000) for clean-up costs. The Government also took legal action against the 1992 Fund as a protective measure to prevent its claim against the Fund becoming time-barred. The Government invoked the liability of the 1992 Fund to compensate the Government if neither the shipowner nor the London Club were to be held liable to pay compensation.

The 1992 Fund submitted its response to the Court in October 2003 requesting that the action against the Fund should be suspended until the final judgement had been rendered in respect of the action against the shipowner and his insurer. The Fund informed the Court that it shared the Swedish Government's view that the *Alambra* was the most likely source of the pollution.

The District Court decided that the action against the Fund should be suspended until the action against the shipowner/London Club had been heard.

As regards the pleadings submitted by the parties reference is made to the Annual Report 2004, page 92.

In May 2005 the shipowner and the London Club asked the Court for postponement of the proceedings to give the parties time to negotiate an out-of court settlement. The Court granted the request for postponement.

In June 2006 the Swedish Government, the shipowner and London Club reached an out-of-court settlement without any admission of liability by any party. As a consequence of this agreement the pending legal actions against the shipowner and the London Club were withdrawn.

Also in June 2006, the Swedish Government and the 1992 Fund concluded a settlement agreement whereby the Swedish Government agreed to pay the 1992 Fund SEK 79 000 (£5 900) corresponding to all of the Fund's legal and expert costs. As a result, the proceedings pending in the Court against the Fund were withdrawn.

## 15.7 PRESTIGE

*(Spain, 13 November 2002)*

### The incident

On 13 November 2002 the Bahamas registered tanker *Prestige* (42 820 GT), carrying 76 972 tonnes of heavy fuel oil, began listing and leaking oil while some 30 kilometres off Cabo Finisterre (Galicia, Spain). On 19 November, whilst under tow away from the coast, the vessel broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. The break-up and sinking released an estimated 25 000 tonnes of cargo. Over the following weeks oil continued to leak from the wreck at a declining rate. It was subsequently estimated by the Spanish Government that approximately 13 800 tonnes of cargo remained in the wreck.


*Coastlines of Spain, France and the United Kingdom were affected to varying degrees by the Prestige incident*

Due to the highly persistent nature of the *Prestige*'s cargo, released oil drifted for extended periods with winds and currents, travelling great distances. The west coast of Galicia (Spain) was heavily contaminated and oil eventually moved into the Bay of Biscay affecting the north coast of Spain and France. Traces of oil were detected in the United Kingdom (the Channel Islands, the Isle of Wight and Kent).

Major clean-up operations were carried out at sea and on shore in Spain. Significant clean-up operations were also undertaken in France. Clean-up operations at sea were undertaken off Portugal.

For details of the clean-up operations and the impact of the spill reference is made to the Annual Report 2003, pages 105-109.

The *Prestige* had insurance for oil pollution liability with the London Steamship Owners' Mutual Insurance Association (London Club).

Between May 2004 and September 2004 some 13 000 tonnes of cargo were removed from the forepart of the wreck. Approximately 700 tonnes were left in the aft section.

## Claims Handling Offices

In anticipation of a large number of claims, and after consultation with the Spanish and French authorities, the London Club and the 1992 Fund established Claims Handling Offices in La Coruña (Spain) and Bordeaux (France).

The Director decided to close the Claims Handling Office in Bordeaux on 30 September 2006. The activities of that Office are now carried out from Lorient by the person who managed the *Erika* Claims Handling Office. The Director also decided to have the Claims Handling Office in La Coruña moved to the local expert's office which is nearby.

## Shipowner's liability

The limitation amount applicable to the *Prestige* under the 1992 Civil Liability Convention is approximately 18.9 million SDR or €22 777 986 (£15.3 million). On 28 May 2003 the shipowner deposited this amount with the Criminal Court in Corcubión (Spain) for the purpose of constituting the limitation fund required under the 1992 Civil Liability Convention.

## Maximum amount available under the 1992 Fund Convention

The maximum amount of compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million SDR per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount should be converted into the national currency on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.

Applying the principles laid down in the *Nakhodka* case, the Executive Committee decided in February 2003 that the conversion in the *Prestige* case should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Committee's Record of Decisions of that session, ie 7 February 2003. As a result, 135 million SDR corresponds to €171 520 703 (£115 million).

## Level of payments

**London Club's position**

Unlike the policy adopted by the insurers in previous Fund cases, the London Club decided not to make individual compensation payments up to the shipowner's limitation amount. This position was taken following legal advice that if the Club were to make payments to claimants in line with past practice, it was likely that these payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund, with the result that the Club could end up paying twice the limitation amount.

**Consideration by the Executive Committee in May 2003**

In May 2003 the Executive Committee decided that the 1992 Fund's payments should for the time being be limited to 15% of the loss or damage actually suffered by the respective claimants as assessed by the experts engaged by the Fund and the London Club. The decision was taken in the light of the figures provided by the delegations of the three affected States and an assessment by the Director, which indicated that the total amount of the damage could be as high as €1 000 million (£674 million). The Committee further decided that the 1992 Fund should, in view of the particular circumstances of the *Prestige* case, make payments to claimants, although the London Club would not pay compensation directly to them.

**Payments to the Spanish Government in 2003**

At the Executive Committee's October 2003 session the Spanish delegation proposed that the 1992 Fund should, subject to certain safeguards, make advance payments on account to the Spanish Government and the Governments of other affected States which wished to receive such advance payments. In view of the importance of the issue and the ramifications involved, the Committee referred the matter to the Assembly.

Taking into account the exceptional circumstances of the *Prestige* incident, the Assembly decided as follows:

- Subject to a general assessment by the Director of the total of the admissible damage in Spain arising from the *Prestige* incident, the Director was authorised to make a payment of the balance between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000), subject also to the Spanish Government providing a guarantee from a financial institution, not from the Spanish State, which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines so as to protect the 1992 Fund against an overpayment situation.
- Such a guarantee should cover the difference between 15% of the assessed amount of the claim submitted on 2 October 2003 and 15% of that claim as submitted (15% of €383.7 million = €57 555 000). The terms and conditions of the guarantee should be to the satisfaction of the Director.
- If the payment amount were to be reduced by the Committee, the difference should be repaid by the Spanish Government.

- Should any other State having suffered losses relating to the *Prestige* incident seek the same solution for payments on the same terms, such a request should be submitted to the Executive Committee.

With the assistance of a number of experts, the Director made an interim assessment of the Spanish Government's claim. On the basis of the documentation provided, he arrived at a preliminary assessment of €107 million (£72 million) and on that basis the 1992 Fund made a payment of €16 050 000 (£11.1 million), corresponding to 15% of the interim assessment.

The Director, with the assistance of a number of experts, also carried out a general assessment of the total of the admissible damage in Spain, and concluded that the admissible damage would be at least €303 million (£204 million).

On that basis, and as authorised by the Assembly, the Director made an additional payment to the Spanish State of €41 505 000 (£28.5 million), corresponding to the difference between 15% of €383.7 million or €57 555 000 and 15% of the preliminarily assessed amount of the Government's claim (€16 050 000). That payment was made against the provision by the Spanish Government of a bank guarantee covering the above-mentioned difference (ie €41 505 000) from the Instituto de Credito Oficial, a Spanish bank with high standing in the financial market, and an undertaking by the Spanish Government to repay any amount of the payment decided by the Executive Committee or the Assembly.

The payment to the Spanish State totalling €57 555 000 (£39 914 906) was made on 17 December 2003.

**Consideration in October 2005**

In October 2005 the Executive Committee considered a proposal by the Director for an increase of the level of payments, a provisional apportionment between the three States concerned of the maximum amount payable by the 1992 Fund on the basis of the total amount of the admissible claims as established by the assessment which had been carried out at that time and the provision of certain undertakings and guarantees by the Governments of France, Portugal and Spain.

In the past the level of the Fund's payments had been determined on the basis of the total amount of presented and possible future claims against the Fund and not on the basis of the Fund's assessment of the admissible losses. On the basis of the figures presented by the Governments of the three States affected by the incident indicating that the total amount of the claims could be as high as €1 050 million (£674 million), it was likely that the level of payments would have to be maintained at 15% for several years unless a new approach could be taken. The Director therefore proposed that, instead of the usual practice of determining the level of payments on the basis of the total amount of claims already presented and possible future claims, it should be determined on an estimate of the final amount of admissible claims against the 1992 Fund, established either as a result of agreements with claimants or by final judgements of a competent court.

On the basis of an analysis of the opinions of the joint experts engaged by the London Club and the 1992 Fund, the Director considered that it was unlikely that the final admissible claims would exceed the following amounts:

| State | Amount (rounded figures) |
|---|---|
| Spain | €500 000 000 |
| France | €70 000 000 |
| Portugal | €3 000 000 |
| **Total** | **€573 000 000** |

The Director therefore considered that the level of payments could be increased to 30%[12].

The Director expressed the view, however, that the 1992 Fund should be provided with



[12] *€171.5 million / €573 million = 29.9%*

appropriate undertakings and guarantees from the three States concerned to ensure that the 1992 Fund was protected against an overpayment situation and that the principle of equal treatment of victims was respected.

The Executive Committee agreed to the Director's proposal and decided as follows:

1. The level of the 1992 Fund's payments should be increased from 15% to 30% of the loss or damage actually suffered by the individual claimant as assessed by the experts appointed by the 1992 Fund and the London Club.

2. The amount of €133 840 000, representing the total amount payable by the 1992 Fund, minus a reserve of 10%, should be apportioned between the three States concerned as set out in the table below.

3. The Director was authorised to pay the Spanish Government €57 365 000 (£38.5 million), subject to the Spanish Government undertaking to compensate all claimants who had suffered pollution damage in Spain for amounts no less than 30% of the loss or damage, repay to the 1992 Fund any amount due by it to the Fund if the Executive Committee were to decide to reduce the proportion payable by the Fund for damage in Spain and provide the 1992 Fund with a bank guarantee to cover the difference between the amount paid to it by the Fund and 15% of the assessed amount.

4. The Director was authorised to pay the Portuguese Government €740 000 (£498 000), subject to the Portuguese Government undertaking to repay to the 1992 Fund any amount due by it to the Fund if the Executive Committee were to decide to reduce the proportion payable by the Fund for damage in Portugal, to indemnify the Fund for any amounts that it had paid to other claimants for pollution damage in Portugal and to provide the 1992 Fund with a bank guarantee to cover the difference between the amount paid to it by the Fund and 15% of the assessed amount.

5. The Director was authorised to pay each claimant in France, except the French Government, 30% of the loss or damage as assessed by the 1992 Fund or as decided by a final judgement rendered by a competent court, subject to the French Government undertaking to accept a reduction in the compensation to which it would be entitled, up to the amount of its admissible claim, to protect the 1992 Fund against overpayment to claimants having suffered damage in France, if the Executive Committee were to decide to reduce the level of payments.

6. The bank guarantees to be provided by the Portuguese and Spanish Governments should be given by a financial institution which would have the financial standing laid down in the 1992 Fund's Internal Investment Guidelines and fulfil the other criteria and generally be to the satisfaction of the Director.

| State | Apportionment % | Apportionment (amounts) (rounded figures) | Bank guarantees[13] |
|---|---|---|---|
| Spain | 85.90% | €115 000 000 | €78 850 000 |
| France | 13.55% | €18 100 000 | - |
| Portugal | 0.55% | €740 000 | €510 500 |
| **Total** | **100.00%** | **133 840 000** | **€79 360 500** |

[13] *The amounts of the bank guarantees correspond to the differences between the apportioned amounts and 15% of the assessed amounts, ie Spain €115 000 000 - €36 150 000 (€241 million at 15%) = €78 850 000; Portugal €740 000 - €29 500 (€1 530 000 at 15%) = €510 500.*

**Developments after the October 2005 session**
In December 2005 the Portuguese Government informed the 1992 Fund that it would not provide any bank guarantee and would as a consequence only request payment of 15% of the assessed amount of its claim.

In January 2006 the French Government gave the required undertaking in respect of its own claim.

In March 2006 the Spanish Government gave the required undertaking and bank guarantee, and as a consequence a payment of €56 365 000 (£38.5 million) was made in March 2006. As requested by the Spanish Government, the 1992 Fund retained €1 million (£670 000) in order to make payments at the level of 30% of the assessed amounts in respect of the individual claims that had been submitted to the Claims Handling Office in Spain. These payments will be made on behalf of the Spanish Government in compliance with its undertaking, and any amount left after paying all the claimants in the Claims Handling Office would be returned to the Spanish Government. If the amount of €1 million were to be insufficient to pay all the claimants who have submitted claims to the Claims Handling Office, the Spanish Government has undertaken to make payments to these claimants up to 30% of the amount assessed by the London Club and the 1992 Fund.

Since the conditions set by the Executive Committee had been met, the Director increased the level of payments to 30% of the established claims for damage in Spain and in France (except in respect of the French Government's claim), with effect from 5 April 2006.

## Claims for compensation

**Spain**
As at 31 December 2006 the Claims Handling Office in La Coruña had received 839 claims totalling €610.7 million (£411 million). These include nine claims from the Spanish Government totalling €559.4 million (£377 million) submitted during the period October 2003 – October 2006.

The claims by the Spanish Government relate to costs incurred in respect of at sea and onshore clean-up operations, removal of the oil from the wreck, compensation payments to fishermen and shellfish harvesters, tax relief for businesses affected by the spill, administration costs, costs relating to publicity campaigns and costs incurred by local authorities and paid by the Government. The claims originally included items for the cost of clean-up operations in the Atlantic National Park amounting to €11.9 million (£8 million). These items have been withdrawn since funding for these operations had been obtained from another source. The claim for the removal of the oil from the wreck, initially for €109.2 million (£74 million), was reduced to €24.2 million (£16.3 million) to take account of funding obtained from another source.

| Category of claim (Spain) | No. of claims | Amount claimed € |
|---|---|---|
| Property damage | 232 | 2 065 970 |
| Clean-up | 17 | 3 923 652 |
| Mariculture | 14 | 19 096 081 |
| Fishing and shellfish gathering | 180 | 3 610 885[14] |
| Tourism | 14 | 688 303 |
| Fish processors/vendors | 299 | 20 145 298 |
| Miscellaneous | 74 | 1 761 785 |
| Spanish Government | 9 | 559 376 830[15] |
| **Total** | **839** | **610 668 804** |



[14] *One claim totalling €132 million (£89 million) from a group of 58 associations was withdrawn following a settlement with the Spanish Government.*
[15] *After certain reductions, in particular the items relating to the Atlantic National Park.*

*Inaccessible shorelines hampered the clean-up and collection of oil following the Prestige incident*

In September 2005 a group of 58 associations from Galicia, Asturias and Cantabria representing 13 600 fishermen and shellfish harvesters withdrew a claim for €132 million (£89 million) against the 1992 Fund, since the associations had signed settlement agreements with the Spanish State on behalf of the victims. A number of other claimants who had settled with the Spanish Government under the Royal Decrees referred to below had also withdrawn their claims.

The table on page 106 provides a breakdown of the different categories of claims received by the Claims Handling Office in La Coruña.

The first claim received from the Spanish Government in October 2003 for €383.7 million (£258 million) was assessed on an interim basis by the Director in December 2003 at €107 million (£72 million). As regards payments to the Spanish Government, see page 105.

Since December 2003, a number of meetings have been held with representatives of the Spanish Government and a considerable amount of further information has been provided in support of its claims. Cooperation with representatives of the Spanish Government is continuing and progress is being made on the assessment of all the claims submitted by the Government.

In August 2006, the Spanish Government submitted a claim to the Claims Handling Office for the costs incurred by the 67 towns that had been paid by the Government, 51 in Galicia, 14 in Asturias and two in Cantabria, for a total of €5.8 million (£3.9 million). The 1992 Fund's experts are examining the claim. The Spanish Government has also submitted claims for the costs incurred by the regions of Galicia for €28 million (£19 million) and of Asturias for €3.3 million (£2.2 million).

In May 2006 the Spanish Government submitted to the 1992 Fund a claim for the cost incurred in the payment of the claims assessed by the Consorcio de Compensación de Seguros (Consorcio).[16]



[16] *A state-owned insurance organisation set up to pay claims for damage not normally covered by commercial insurance policies, such as damage due to terrorist activities or natural disasters.*

After a number of adjustments, the Spanish Government indicated in December 2006 that the total amount of its claims was €559 376 830 (£374.4 million). It also indicated that further adjustments would be made in respect of the payments by the Government to two of the regions affected by the *Prestige* incident (Cantabria and the Basque Country), the treatment of residues and the individual assessments by the Consorcio.

Of the claims other than those of the Spanish Government, 88.8% have been assessed for €3.7 million (£2.5 million). Interim payments[17] totalling €484 500 (£326 000) have been made in respect of 153 of the assessed claims, mainly at 30% of the assessed amount. Of the remaining claims, four are being assessed, 10 are in progress, 190 are awaiting a response from the claimants, 77 are awaiting further documentation, 381 totalling €27.4 million (£18.4 million)) have been rejected and 15 have been withdrawn by the claimant.

**France**

By 31 December 2006, 474 claims totalling €118.5 million (£80 million) had been received by the Claims Handling Office in Lorient. The table below provides a breakdown of the different types of claims.

Of the 474 claims submitted to the Claims Handling Office, 84% had been assessed by 31 December 2006. Many of the remaining claims lack sufficient supporting documentation and such documentation has been requested from the claimants. Four hundred claims had been assessed at €45.3 million (£30.5 million). Three hundred and ninety-four claims had been approved for €44.7 million (£30 million) and interim payments totalling €3.1 million (£2.1 million) had been made at 30% of the assessed amounts in respect of 260 of the approved claims. The remaining approved claims await a response from the claimants or are being re-examined following the claimants' disagreement with the assessed amount. Forty claims totalling €2 million (£1.3 million) had been rejected because the claimants had not demonstrated that a loss had been suffered due to the incident.

In May 2004, the French Government submitted a claim for €67.5 million (£45 million) in relation to the costs incurred for clean-up and preventive measures. The 1992 Fund and the London Club have provisionally assessed the claim at €31.2 million (£21 million). A request for further information was sent to the French Government in August 2005 in order to enable the experts appointed by the 1992 Fund and the London Club to complete the assessment.

A further 59 claims, totalling €10.5 million (£7.1 million), had been submitted by local authorities for costs of clean-up operations.

| Category of claim (France) | No. of claims | Amount claimed € |
|---|---|---|
| Property damage | 9 | 87 772 |
| Clean-up | 59 | 10 461 115 |
| Mariculture | 125 | 12 220 546 |
| Shellfish gathering | 3 | 116 810 |
| Fishing boats | 59 | 1 601 717 |
| Tourism | 194 | 25 268 938 |
| Fish processors/vendors | 9 | 301 446 |
| Miscellaneous | 15 | 982 860 |
| French Government | 1 | 67 499 154 |
| **Total** | **474** | **118 540 358** |



[17] *Compensation payments made by the Spanish Government to claimants have been deducted when calculating the interim payments.*

Twenty-seven of these claims had been assessed and approved at €3.4 million (£2.3 million). Interim payments totalling €1 million (£675 000) had been made in respect of 40 claims at 30% of the assessed amounts.

One hundred and twenty-five claims had been submitted by oyster farmers totalling €12.2 million (£8.2 million) for losses allegedly suffered as a result of market resistance due to the pollution. The experts engaged by the London Club and the 1992 Fund had examined these claims and 118 of them, totalling €1.8 million (£1.2 million), had been assessed at €468 000 (£315 000). Payments totalling €87 000 (£59 000) had been made in respect of 75 of these claims at 30% of the assessed amounts. Seven claims were not supported by any documentation and requests have been made to these claimants to provide detailed information to support their claims.

**Portugal**

In December 2003 the Portuguese Government submitted a claim for €3.3 million (£2.2 million) in respect of the costs incurred in clean-up and preventive measures. Additional documentation submitted in February 2005 included a supplementary claim for €1 million (£670 000), also in respect of clean-up and preventive measures. The claims were finally assessed at €2.2 million (£1.5 million). The Portuguese Government accepted this assessment. Since, as mentioned above, the Portuguese Government had decided not to provide a bank guarantee, in August 2006 the 1992 Fund made a payment of €328 488 (£222 600), corresponding to 15% of the final assessment. This does not preclude the payment of further compensation to the Portuguese Government in the event that the Executive Committee were to increase the level of payments unconditionally.

## Time bar

Under the 1992 Civil Liability Convention, rights to compensation from the shipowner and his insurer are extinguished (time-barred) unless legal action is brought within three years of the date when the damage occurred (Article VIII). As regards the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period of an action against the shipowner or his insurer (Article 6). Both Conventions also provide that in no case shall legal actions be brought after six years from the date of the incident.

In September 2005 individual letters about the time-bar issue were sent to all those who had submitted claims to the Claims Handling Offices in Spain and France and with whom settlements had not been reached by that time. Advertisements were placed in the national and local press in Spain and France drawing attention to the time-bar issue.

## Payments and other financial assistance by the Spanish Authorities

The Spanish Government and regional authorities made payments of €40 (£27) per day to all those directly affected by the fishing bans. These included shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. These payments have been included in subrogated claims by the Spanish authorities pursuant to Article 9.3 of the 1992 Fund Convention.

The Spanish Government has also provided aid to other individuals and businesses affected by the oil spill in the form of loans, tax relief and waivers of social security payments.

In June 2003 and July 2004 the Spanish Government adopted legislation in the form of two Royal Decrees (Real Decreto-Ley) making available a total amount of €249.5 million (£168 million) to compensate in full certain categories of claimants who suffered pollution damage. To receive compensation the claimants had to renounce the right to claim compensation in any other way in relation to the *Prestige* incident and had to transfer their rights of

compensation to the Spanish Government. The Decrees provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions.

At the February 2004 session of the Executive Committee the Spanish delegation mentioned that the Spanish Government had received almost 29 000 claims for compensation from victims of the *Prestige* incident who wished to use the payment mechanism set out in the first Royal Decree. It was also mentioned that of those claims, some 22 800 related to groups of workers in the fisheries sector, which would be assessed by means of a system using either a formula ('estimación objetiva') or a scale. It was stated that some 5 000 claims of other groups would be subject to individual assessments.

In May 2005 the Spanish Government informed the 1992 Fund that agreements had been reached with some 19 500 workers in the fisheries sector and that payments totalling some €88 million (£59 million) had been made to them under the Royal Decrees.

The 1992 Fund was informed by the Spanish Government in 2004 that claims which under the Decrees were to be subject to individual assessment would be assessed by the Consorcio.

Since the Royal Decrees provided that the assessment of claims would be made following the criteria used to apply the 1992 Civil Liability and Fund Conventions, meetings have been held between representatives of the Consorcio and of the 1992 Fund to discuss the criteria. As at 31 December 2006 the Consorcio had provided details of the claims submitted as shown in the table below.

The total amount claimed is €230 million (£155 million).

The Consorcio requested the assistance of the experts appointed by the London Club and the 1992 Fund in the assessment of 241 of these claims for a total of €47.8 million (£32 million). A number of the claims referred to these experts were not supported by sufficient evidence to demonstrate the loss claimed. However, the experts of the Consorcio and the experts appointed by the London Club and the 1992 Fund have made joint assessments of 194 claims. One hundred and eighty-seven of these claims, for €20.3 million (£13.7 million), have been approved by the 1992 Fund and the London Club for €2.4 million (£1.6 million). One hundred and thirty-four claims included in the 241 claims with which the Consorcio has requested assistance have also been submitted directly to the Claims Handling Office. Details of 83 of these assessments have been provided to the Consorcio.

In May 2006 the Spanish delegation informed the Executive Committee that 381 of the claims assessed by the Consorcio had been rejected due to lack of supporting documentation or lack of evidence of loss. That delegation also stated that,

| Category of claim to be assessed by the Consorcio | Number of claims |
|---|---|
| Mariculture (property damage and loss of income) | 103 |
| Fishing (property damage and loss of income) | 179 |
| Fish and shellfish vendors (loss of income) | 310 |
| Fish and shellfish processors (loss of income) | 79 |
| Employees fisheries sector (loss of income) | 109 |
| Tourism (loss of income) | 86 |
| Land (damage and loss of income during clean-up operations) | 72 |
| Property damage | 14 |
| Miscellaneous | 19 |
| **Total** | **971** |

*The manual clean-up of oil from a sandy beach in Spain*

from the assessment of 90% of the claims examined through this procedure, it could be deduced that the maximum amount to be paid by the Spanish Government in respect of these claims would be some €50 million (£34 million).

## Payments and other financial assistance by the French Authorities

The French Government introduced a scheme to provide payments in excess of the amounts paid by the 1992 Fund to claimants in the fishery and shellfish harvesting sectors who made a request to that effect by 13 December 2004. Payments were made in January 2005 to 175 claimants for a total amount of €1.15 million (£770 000).

The French Government informed the Director that these payments were advances on the payments to be made by the 1992 Fund and would be repaid by the claimants and that the Government would not pursue subrogated claims against the 1992 Fund in respect of the payments made.

## Claim for the costs of removing the oil from the sunken wreck

**The operation**

As mentioned above, the *Prestige*, originally laden with a cargo of 76 972 tonnes of heavy fuel oil, broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. An unmanned submersible vehicle was used to seal and plug temporarily cracks to minimise the escape of oil, as a result of which the estimated rate of loss was reported to be less than 20 litres per day.

The Spanish Government established a Scientific Commission to study the various possibilities for dealing with the wreck. This Commission concluded that there were two possible solutions, namely the extraction of the oil remaining in the wreck and the confinement of the wreck in a structure of concrete or steel.

On the basis of surveys carried out in 2003 the quantity of oil remaining in the wreck was estimated to be 13 100 tonnes in the bow section and 700 tonnes in the stern section.

In December 2003, following trials in the Mediterranean and subsequently at the wreck site, the Spanish Government concluded that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by gravity through holes cut in the tanks. The removal of the oil was carried out from May to October 2004. Some 13 000 tonnes of oil cargo was removed from the fore section of the wreck following which nutrients were added to the tanks to promote the biodegradation of the remaining oil residues. No attempt was made to remove or treat the 700 tonnes of oil in the aft section.

**The claim**

The Spanish Government submitted a claim for €109.2 million (£74 million) for the cost of the operation to remove the oil from the wreck of the *Prestige*, including the costs of preparatory work and the feasibility trials conducted in the Mediterranean and at the wreck site. In February 2006 this claim was reduced to €24.2 million (£16.3 million).

**Consideration by the 1992 Fund Executive Committee in October 2005**

At its October 2005 session the Executive Committee considered the question as to whether the Spanish Government's claim, which at that time was for €109.2 million (£74 million), for the costs of the operation to remove the oil from the *Prestige* was admissible in accordance with the 1992 Fund's criteria as set out in the 1992 Fund Claims Manual, in particular whether the operation was reasonable from an objective and technical point of view.

The Director had requested the International Tanker Owners Pollution Federation Limited (ITOPF) to provide the 1992 Fund with an opinion on the technical reasonableness of the operation, ie on the basis of the particular circumstances of the incident, the facts available at the time of the decision to undertake the operation and whether the costs incurred and the relationship between those costs and the benefits derived or expected were reasonable. The Spanish Government had requested an opinion from an international team of experts[18] on the ecological and social necessity to deal with the wreck of the *Prestige*.[19]

One of the main differences between the opinions of the two groups of experts was that the experts appointed by the Spanish Government had taken into account the possible social impact of leaving the oil in the wreck, whereas ITOPF had focused solely on the 1992 Fund's admissibility criteria, which did not take social, non-economic effects into account. In his consideration of the admissibility issue, the Director had also not taken such effects into account.

The Director shared the views of ITOPF and the experts appointed by the Spanish Government that a catastrophic release of the oil was unlikely and that any escape of oil from the wreck would likely have been in the form of a slow leak of small quantities of oil and that although there was a perceptible risk of oil released from the wreck reaching seafood cultivation areas in Galicia and tourist beaches of the Atlantic islands, a substantially greater release of oil would have been required to cause significant damage to these resources.

In light of the considerations set out above, the Director expressed the view that the oil remaining in the sunken sections of the *Prestige* did not pose a significant pollution threat and that the costs of the operation to remove the oil were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck. For this reason, the Director considered that the Spanish Government's claim did not fulfil the criteria for admissibility laid down by the IOPC Funds' governing bodies, namely that the operation should be reasonable from an objective, technical point of view.

After a lengthy discussion, which is reflected on pages 113-116 of the Annual Report 2005, the



[18] *Dr Michel Girin, Director of the Centre de documentation de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE), (France), Professor Lucien Laubier, Director of the Institut océanographique de Paris (IOP), (France) and Dr Ezio Amato, Scientific Director at the Istituto Centrale per la Ricerca Scientifica e Tecnologica Applicata al Mare (ICRAM), (Italy).*

[19] *The opinions are available on the IOPC Funds' website (document 92FUND/EXC.30/9/2, Annexes I and II.*

Committee decided to defer any decision on the admissibility of the claim, but instructed the Director to collaborate with the Spanish Government to examine all the elements of the claim with a view to identifying possible admissible items and to assess the admissible quantum of those items for consideration by the Committee at a future session.

**Funding by the European Commission**

On 4 December 2003 the Commission of the European Communities (European Commission) decided to make a concession of aid to the Spanish Government in connection with the preparatory technical work for the application of solutions for dealing with the oil in the wreck of the *Prestige*. On 31 March 2005 the European Commission decided to make a concession of aid to the Spanish Government for the costs of removing the oil from the wreck of the *Prestige*.

In February 2006 the Spanish Government informed the 1992 Fund that it had so far received from the European Commission a total of €50.9 million (£34 million) and that further payments totalling €33.1 million (£22 million) were pending. As a result of the amounts awarded by the European Commission, the Spanish Government reduced its claim to €24 168 265 (£16.3 million), of which €4 785 000 (£3.2 million) related to the costs incurred in 2003 and €19 383 265 (£13 million) related to the costs incurred in 2004.

**Director's assessment**

As instructed by the Executive Committee the Director carried out a detailed examination of all the elements of the claim by the Spanish Government with the aim of identifying items that might be admissible in accordance with the Funds' criteria. The Director's report on this examination, which is summarised below, was considered by the Committee in February 2006. The Director suggested that the costs of the operation to remove the oil from the vessel could be conveniently divided into two main parts, namely costs incurred in 2003 totalling €33.1 million (£22.3 million) and costs incurred in 2004 totalling €76.1 million (£51.3 million). The costs incurred in 2003 related to operations to seal further oil leaks emanating from the wreck, and various studies, including investigations into the feasibility of different methods of extracting the oil from the wreck. Costs incurred in 2004 related to the actual oil removal operation and the introduction of nutrients into the tanks of the fore section of the wreck after the bulk of the oil had been removed in order to promote the biodegradation of the remaining oil residues.

The Director considered that by 30 April 2003 the very high costs of the oil removal operation in relation to the potential economic and environmental effects of leaving the oil in the wreck were apparent and that costs incurred subsequent to that date were therefore for the most part inadmissible. However, on the basis of the information contained in the supporting documentation submitted with the claim the Director took the view that there were a number of items of expenditure incurred in early 2003 that were admissible in principle. The Director also considered that the costs of the work undertaken in July and August 2003 to complete the sealing of the wreck were admissible in principle.

**Consideration by the Executive Committee in February 2006**

During the discussion at the Executive Committee's February 2006 session, some delegations stated that they did not share the Director's view that the cost of the oil removal operation was disproportionate on the grounds that had the oil not been removed from the wreck pollution would have continued year on year. The point was made that it had not been possible to predict with any certainty what the outcome of leaving the oil in the wreck would have been and that it would therefore be difficult for any government to resist pressure from the public to ensure that the risk was eliminated. It was submitted that there was a very clear link between the costs incurred in 2003 and 2004 in that the operation could not have proceeded in 2004 without the necessary studies and preparatory work in 2003.

Some delegations considered that the admissibility of the claim should be assessed on the basis of the revised claim amount and not on the actual cost of the operation to remove the oil. Other delegations disagreed and expressed the view that admissibility should not be assessed on the basis of the reduced claim, since this would encourage the manipulation of claims in the future.

Most delegations that intervened expressed the view that, on the basis of the Funds' existing admissibility criteria, and in the interest of applying those criteria in a uniform way, the claim for the costs incurred by the Spanish Government in 2004 for the removal of the oil from the wreck was inadmissible. A number of delegations considered that for the claim to be admissible the Fund would need to change its existing policy so as to allow assessments to be made on the basis of a broader analysis including a social dimension. Some delegations considered that it was important that the Funds were prepared to deal with similar claims in the future in a more flexible manner.

The Executive Committee decided that some of the costs incurred in 2003 in respect of sealing the oil leaking from the wreck and various surveys and studies were admissible in principle, but that the claim for costs incurred in 2004 relating to the removal of oil from the wreck was inadmissible.

The Committee instructed the Director to carry out an examination of the admissibility criteria relating to claims for costs of preventive measures, in particular for the extraction of oil from sunken vessels, with a view to enabling the 1992 Fund Assembly to discuss possible alternatives for the existing criteria for admissibility within the framework of the 1992 Conventions. The Director's study of this issue was considered by the Assembly in October 2006 (see page 29).

**Further assessment of the claim**

In accordance with the Executive Committee's decision, an assessment is being carried out of those admissible costs of activities which had a bearing on the assessment of the pollution risk posed by the oil in the wreck and were incurred by the Spanish Government in 2003 prior to the removal of oil from the wreck.

## Investigations into the cause of the incident

**The Bahamas Maritime Authority**

An investigation into the cause of the incident was carried out by the Bahamas Maritime Authority (ie the authority of flag State). The report of the investigation was published in November 2004. A summary of the findings is set out in the Annual Report 2005 (pages 116-117).

**The Spanish Ministry of Public Works**

The Spanish Ministry of Public Works (Ministerio de Fomento) carried out an investigation into the cause of the incident through the Permanent Commission on the Investigation of Maritime Casualties which is tasked with determining the technical causes of maritime accidents. For a brief summary of the conclusions of the investigation, reference is made to the Annual Report 2005 (pages 117-118).

**The Criminal Court in Corcubión**

The Criminal Court in Corcubión in Spain is carrying out an investigation into the cause of the incident in the context of criminal proceedings. The Court is investigating the role of the master of the *Prestige* and of a civil servant who was involved in the decision not to allow the ship into a port of refuge in Spain.

**The French Ministry of Transport and the Sea**

The French Ministry of Transport and the Sea (Secrétariat D'État aux Transports et à La Mer) carried out a preliminary investigation into the cause of the incident through the General Inspectorate of Maritime Affairs – Bureau of investigations – accidents/sea (Inspection générale des services des affaires maritimes – Bureau enquêtes – accidents / mer (BEAmer)). A brief summary of the report on the investigation is included in the Annual Report 2005 (pages 120-121).

**Examining magistrate in Brest**
An examining magistrate in Brest is carrying out a criminal investigation into the cause of the incident.

**The 1992 Fund's involvement**
The 1992 Fund continues to follow the ongoing investigations through its Spanish and French lawyers.

## Court actions

**Spain**
Some 2 360 claims have been lodged in the legal proceedings before the Criminal Court in Corcubión (Spain). Three hundred and eighty-four of these claims involve persons who have submitted claims directly to the London Club and the 1992 Fund through the Claims Handling Office in La Coruña. Details of the losses allegedly suffered in respect of some of these court actions have been provided to the Court and are being examined by the experts engaged by the London Club and the 1992 Fund. In September 2005, the largest group of victims in the fisheries, shellfish harvesting and fish-farming sector submitted a document to the Instructing Magistrate in Corcubión in which it was stated that the group members had signed settlement agreements with the Spanish State, and that in accordance with those agreements, any action or compensation to which these victims could be entitled as a result of the *Prestige* incident, against the Spanish State as well as against the 1992 Fund, were withdrawn. The withdrawal affected some 13 700 persons, covering approximately 75% of the fisheries sector affected by the *Prestige* incident. A number of other claimants who had settled with the Spanish Government under the Royal Decrees have withdrawn their claims from the court proceedings. It is expected that more claimants will withdraw their court actions for the same reason.

The Spanish Government has taken legal action in the Criminal Court in Corcubión on its own behalf and on behalf of regional and local authorities and 971 other claimants or groups of claimants. A number of other claimants have also taken legal action and the Court is assessing whether these claimants are eligible to join the proceedings.

**France**
The French Government and 227 other claimants have taken legal action against the shipowner, the London Club and the 1992 Fund in 16 courts in France requesting compensation totalling some €131 million (£88 million), including €67.7 million (£45 million) claimed by the Government.

In March 2003 two oyster farmers' unions and an association brought an action, which is included in the actions referred to above, against the shipowner, the London Club, the owner of the cargo/charterer of the vessel, the Spanish State, the American Bureau of Shipping (ABS), the classification society of the *Prestige* and Bureau Veritas, the classification society that had certified the *Prestige* before ABS. In June 2006 the Fund was joined in the proceedings as a defendant.

**Portugal**
The Portuguese State took legal action in the Maritime Court in Lisbon against the shipowner, the London Club and the 1992 Fund claiming compensation for €4.3 million (£2.9 million). Following the settlement of the claim referred to above, the Portuguese State withdrew its action in December 2006.

**United States**
The Spanish State took legal action against ABS before the Federal Court of first instance in New York requesting compensation for all damage caused by the incident, estimated initially to exceed US$700 million (£358 million[20]) and estimated later to exceed US$1 000 million (£511 million). The Spanish State maintained *inter alia* that ABS had been negligent in the inspection of the *Prestige* and had failed to detect corrosion, permanent deformation, defective materials and fatigue in the vessel and had been negligent in granting classification.



[20] *The conversion of the US$ has been made on the basis of the exchange rate as at 29 December 2006 (£1 = US$1.9572).*

*Following the Prestige incident, rocky shorelines presented access problems for oil removal*

ABS denied the allegation made by the Spanish State and in its turn took action against the State, arguing that if the State had suffered damage this was caused in whole or in part by its own negligence. ABS made a counterclaim and requested that the State should be ordered to indemnify ABS for any amount that ABS may be obliged to pay pursuant to any judgement against it in relation to the *Prestige* incident. The New York Court dismissed the counterclaim by ABS on the grounds that the Spanish State was entitled to sovereign immunity. ABS sought reconsideration by the Court or permission to appeal.

In August 2005 ABS submitted a request to the New York Court for a summary judgement dismissing the Spanish State's action. ABS argued that it was an agent or servant of the shipowner and that therefore in accordance with Article III.4(a) of the 1992 Civil Liability Convention no claim for compensation for pollution damage could be made against it unless the damage resulted from ABS's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. ABS also maintained that since the United States was not a Contracting State to the Civil Liability Convention and the pollution damage had occurred in Spain, the United States Courts were not competent to hear the case. The Court has not yet taken a decision on the request.

In July 2006 the New York Court confirmed its decision on the Spanish State entitlement to sovereign immunity, but granted ABS permission to resubmit its counterclaim on different grounds.

In July 2006 ABS resubmitted its counterclaim, designed to fall within the sovereign immunity exception that it did not seek relief exceeding in amount or different in kind from that sought by Spain. ABS sought indemnity from the Spanish State in the event any third party obtained a judgement against ABS as a result of the incident. In September 2006 the Spanish State requested that the ABS counterclaim be dismissed on the grounds that the Court lacked subject matter jurisdiction. The New York Court has not yet taken any decision on this request.

As part of the discovery procedure in the New York litigation, ABS requested production by the Spanish State of all documents and material forming part of the file of the Criminal Court in Corcubión investigating the *Prestige* incident, as well as all the documents and material reviewed by the Spanish Permanent Commission for the Investigation of Maritime Accidents. The Spanish State responded, asserting that the requested documents and material were protected from disclosure by privilege under Spanish procedural law. In August 2005, after having taken into account the various competing interests involved, the judge supervising discovery denied the Spanish State's assertion of privilege and ordered the production of the documents. The Spanish State appealed against this decision.

In September 2005, the Spanish State submitted a petition to the Criminal Court in Corcubión maintaining that these documents and material were privileged under Spanish procedural law and could not be provided to ABS. The Criminal Court decided that these documents and material were privileged to the parties who had joined in the criminal proceedings and should therefore not be made available to ABS.

In August 2006 the New York Court rejected the appeal by the Spanish State. The Court considered that both parties to the proceedings should have access to the same material and that failure by the Spanish State to make the documents and material requested available to ABS would place ABS in a situation of unfair disadvantage in that it would affect ABS's right of defence. In a decision which is not subject to appeal, the Court ordered the Spanish State to produce the documents and material by 30 September 2006.

The Spanish State reviewed its position and in August 2006 submitted a request to the Court in Corcubión to be authorised to disclose to ABS the documents and material referred to above. The Spanish State argued that the decisions by the New York Court and the Corcubión Court placed the Spanish State in a difficult position in that a New York Court had ordered the State to do something, namely to disclose all documents in the Corcubión Court file, and the Court in Corcubión had ordered the State to do the contrary, namely not to disclose those documents. The Spanish State mentioned that a confidentiality agreement had been concluded between the State and ABS in respect of any documents and material disclosed. The Spanish State further argued that if the documents and materials requested were not made available, it would damage the Spanish State's position before the New York Court. In September 2006, the Court in Corcubión authorised the disclosure to the New York Court of all the documentation relevant to the *Prestige* case.

In June 2006 the Spanish State requested that the New York Court should order ABS to produce financial records. The Spanish State argued that the financial records would demonstrate that ABS had diverted revenue and resources, and that, as a result, ABS had not adequately addressed surveyor training and staffing deficiencies. ABS maintained that the financial records were not relevant at the liability stage of the litigation.

The New York Court denied the Spanish State's request, holding that the financial records were not relevant to the issue of whether or not there were deficiencies in ABS's performance in respect of the *Prestige*. The Spanish State did not appeal against this decision.

In November 2006 the judge supervising discovery ruled on a motion by ABS to compel the Spanish State to produce all e-mail communications from the casualty period of 12-20 November 2002. The judge found that the State had failed either to preserve e-mail communications or to conduct a diligence search when ABS first sought production of those communications. Finding that a search for the e-mail communications at this late date may be futile, the judge invited ABS to make a request for the relief, remedy or sanction it deemed appropriate. The Spanish State has requested that the judge reconsider his decision.

In view of the judge's invitation, ABS filed a motion seeking sanctions for the Spanish State's

failure to produce the e-mail communications. ABS requested dismissal of the action or dismissal of certain parts of the action, or a ruling that at trial an adverse inference should be drawn against the State for its failure to produce the e-mails. ABS requested, in any event, recovery of its costs and fees associated with the dispute over the production of the e-mails. No decision has yet been taken on ABS's request.

### Recourse action by the 1992 Fund against ABS

In October 2004 the Executive Committee considered whether the 1992 Fund should take recourse action against the American Bureau of Shipping (ABS). As for the Executive Committee considerations reference is made to the Annual Report 2004, pages 102-104.

The Executive Committee decided that the 1992 Fund should not take recourse action against ABS in the United States. It further decided to defer any decision on recourse action against ABS in Spain until further details surrounding the cause of the *Prestige* incident came to light. The Director was instructed to follow the ongoing litigation in the United States, monitor the ongoing investigations into the cause of the incident and take any steps necessary to protect the 1992 Fund's interests in any relevant jurisdiction. The Committee stated that this decision was without prejudice to the Fund's position vis-à-vis legal actions against other parties.

## 15.8 N°7 KWANG MIN

*(Republic of Korea, 24 November 2005)*

### The incident

The Korean tanker *N°7 Kwang Min* (161 GT) collided with the fishing vessel *Chil Yang N°1* (139 GT) in port of Busan, Republic of Korea. A total of 37 tonnes of heavy fuel oil escaped into the sea from a damaged cargo tank. The remaining oil onboard the *N°7 Kwang Min* was transferred to a number of other vessels. The *N°7 Kwang Min* was subsequently taken to a shipyard in Busan.

The 1992 Fund appointed a team of Korean surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

### Clean-up operations

The Korean Coast Guard, the Korea Marine Pollution Response Corporation and seven private clean-up contractors promptly mobilised 36 pollution response vessels. Defensive booms were deployed to protect port installations such as shipyards and fish markets as well as the hulls of a number of ships berthed in the port. As a result of this rapid response serious property damage and consequential economic losses were prevented. Most of the on-water clean-up resources were withdrawn on 27 November 2005.

The remaining spilt oil, as well as considerable quantities of oiled debris, stranded on the shorelines to the west and south of the island of Yeongdo. Four private clean-up contractors were appointed by the shipowner to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high pressure water washing to remove oil stains. Shoreline clean-up operations were completed in early 2006.

### Impact of the spill

Drifting oil at sea contaminated the hulls of a number of vessels, including those engaged in the clean-up operations. Some of the affected shorelines support village-fishing grounds, and the activities of 81 female divers engaged in the gathering of sub-tidal species of plants and animals were interrupted.

The oil also affected a number of seaweed (sea mustard) cultivation farms as it passed through the supporting structures, contaminating buoys and ropes. However, as a result of oiled equipment having been cleaned or replaced quickly, there was no serious damage to the seaweed products.

Six seafood restaurants reported alleged mortalities of fish as a result of oil entering the sub-surface intakes supplying seawater to the aquaria in which they were being kept.

*Manual collection of contaminated sea mustard following the N°7 Kwang Min incident*

## Applicability of the 1992 Fund Convention

The limitation amount applicable to the *N°7 Kwang Min* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.5 million).

In December 2005 the Korean Ministry of Maritime Affairs and Fisheries informed the 1992 Fund that the owner of the *N°7 Kwang Min* was not insured for pollution liabilities and had insufficient financial assets to cover the claims for compensation for pollution damage arising form the incident.

At its February 2006 session, the Executive Committee endorsed the position taken by the Director as regards his authority to settle claims under the Internal Regulations and also authorised him to make final settlement of all further claims arising out of the incident.

## Claims for compensation

Twelve claims totalling Won 2.7 billion (£1.5 million) in respect of costs of clean-up and preventive measures were settled for a total of Won 1.9 billion (£1.1 million). One claim was rejected.

The owners of six live seafood restaurants located in the polluted area submitted claims for alleged mortalities of fish as a result of oil entering their aquaria via submerged seawater intakes, of loss of earnings as a result of cancellations of bookings and other unspecified damages. The claims, which totalled Won 163 million (£90 000), were settled at Won 3.1 million (£1 860).

Claims totalling Won 154 million (£90 000) by 81 women divers for loss of earnings due to interruption of their shellfish harvesting and sales activities were settled for Won 36 million (£20 000).

Further fishery claims totalling Won 93 million (£51 000) by 10 boat owners were settled at Won 51 million (£28 000).

Claims by nine seaweed (sea mustard) cultivators totalling Won 371 million (£204 000) for property damage and production disruption

were assessed at Won 42 million (£23 000). One claim was rejected. Six of the claimants settled their claims for Won 22 million (£12 000). Two claimants who had initially agreed with the assessed amount, later refused to accept the proposed settlement and commenced legal actions against the owners of the two vessels involved in the incident.

### Legal actions

The investigation into the cause of the incident by the Busan Maritime Safety Tribunal led to the conclusion that the liability ratio between the owner of the *N°7 Kwang Min* and the owner of the fishing vessel *Chil Yang N°1* was 40:60.

Upon investigations on the financial status of the owner of the fishing vessel *Chil Yang N°1*, it has emerged that he owns a building, the value of which is unknown, but it is estimated to exceed the limitation amount applicable to the vessel under the Korean Commercial Code, ie 83 000 SDR (£64 000).

As mentioned above, two seaweed cultivators commenced legal actions against the owners of the two vessels involved in the incident.

The Fund has intervened in these legal actions in order to explore the possibility of recovering the sums paid in compensation for this incident.

## 15.9 SOLAR 1

*(Philippines, 11 August 2006)*

### The incident

The Philippines registered tanker *Solar 1* (998 GT), laden with a cargo of 2 081 tonnes of industrial fuel oil, sank in heavy weather in the Guimaras Straits, some 10 nautical miles south of Guimaras Island, the Philippines (see map).

The vessel, which had departed from Bataan (the Philippines) on 9 August 2006 bound for Zamboanga (the Philippines), encountered heavy seas on 10 August and began to trim by the head. The vessel sought shelter to the north of Guimaras Island where an inspection by the crew revealed damage to the forecastle, resulting in an ingress of seawater in the motor room, cargo gear room, fore peak and chain locker. After temporary repairs had been carried out, and all water removed from the flooded spaces, the vessel resumed its passage on the same day. During the afternoon of 11 August the vessel encountered heavy seas and developed a 5° starboard list. The list worsened rapidly, causing the vessel to capsize. The master ordered the crew to abandon ship. Eighteen of the 20 crew members survived the incident but two were lost at sea. The survivors reported seeing the vessel's bow slowly submerge and after a while only the stern and the propeller were visible before they too disappeared.

An unknown, but substantial, quantity of oil was released from the vessel after it sank and the sunken wreck continued to release oil, albeit in ever decreasing quantities. The Philippines National Mapping and Resource Information Authority undertook a bathymetric survey of the area of the sinking and located the vessel in 630 metres of water, almost immediately below the location of surfacing oil.

The *Solar 1* had insurance for oil pollution liability with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club).

The Shipowners' Club and the 1992 Fund jointly requested an expert from the International Tanker Owners Pollution Federation Limited (ITOPF) to travel to the Philippines.

The 1992 Fund engaged a lawyer in the Philippines to assist it in dealing with any legal issues which may arise from the incident.

### Impact of the spill

**Shoreline contamination**

The Guimaras Straits contain a group of islands, the shorelines of which include sandy beaches, rocky shores, coral reefs, seagrass beds and mangroves. The south-west coast of Guimaras Island, the largest island in the Straits, contains a


*Location of the Solar 1 incident*

national marine reserve and an aquaculture research centre. The inshore waters of Guimaras Island support an important small-scale fishery with a large proportion of the coastal communities engaged in subsistence fishing. Coastal and onshore aquaculture is also widespread. There is a modest tourism industry on the island.

Oil stranded on the south and south-west coasts of Guimaras Island and a number of small islets off the south-east coast. These coasts are dominated by mangrove forests, which are particularly vulnerable to the smothering effects of oil. Lesser quantities of oil also stranded on the east and north-east coasts of Panay in the vicinity of Iloilo and to the north of Ajuy Bay and the Conception Islands.

About 124 kilometres of shoreline and around 500 hectares of mangrove were polluted to varying degrees. The Department of Environment and Natural Resources (DENR) and researchers from the University of the Philippines in Visayas embarked on a study of the short- and long-term effects of the oil on the mangrove trees.

**Fisheries and mariculture**

The oil spill had a major impact on small-scale fisheries on Guimaras Island, which fall broadly into two categories: a small-boat fishery, which uses a variety of fishing gears, and a fixed-trap fishery which uses large structures fixed to the seabed to trap the fish in compartments from which they are harvested. Around 7 000 individuals engaged in fishing were directly affected by the pollution either as a result of contamination of their fishing gear or the presence of oil in their fishing grounds. A further 4 000 individuals engaged in fishing off parts of the island that were not polluted reported experiencing difficulties in selling their catch due to public perception that all fish from Guimaras Island might be contaminated.

The spill also impacted aquaculture facilities, which primarily consist of brackish-water culture of milkfish in onshore ponds. Seawater is allowed into the ponds through sluices (intakes). The Bureau of Fisheries and Aquatic Resources of the Philippines reported that about 90 operators of fishponds were affected to varying degrees. Some operators decided to harvest their fish early due to fears of contamination as a result of which the fish did not reach their normal market size. There were a few reports of mortalities of fish. Heavy oiling of ponds was not widespread.

Significant areas of seaweed culture, in which the seaweed is attached to ropes suspended off the seabed on poles, were reported to have been affected by the oil. The seaweed is susceptible to environmental stress such as reduced salinity, heat and pollution. However, it appears that the oil from the *Solar 1* was responsible for most of the damage observed in crops in the polluted area.

A fishery expert and an aquaculture expert with experience of working in the Philippines were engaged by the Shipowners' Club and the 1992 Fund to attend on site to make an overall assessment of the losses and to assist claimants with the submission of claims.

**Tourism**

Guimaras Island is very dependent on its beaches to attract visitors, since there are very few alternative tourist attractions. As a consequence the spill had a major impact on tourist businesses. The majority of visitors (76%) make day excursions to the island and the remaining 24% are tourists staying overnight in Guimaras. Of the tourist visitors, an estimated 94% are domestic (ie Filipino nationals), while 6% are of foreign origin, mainly from Korea and Japan. The peak visitor season is April to June while the rest of the year has relatively constant monthly visitors.

The Shipowners' Club and the 1992 Fund engaged tourism experts who have been used by the Fund in previous incidents. The experts travelled to the affected area and met with many potential claimants to gain a better understanding of the nature of their businesses and the impact of the spill on their operations and to advise them on how to submit their claims for compensation.

There are about 80 tourist businesses on Guimaras Island and its surrounding islets. More than half of these rely on the beaches or are operations loosely referred to as beach resorts. About 25 were located in the polluted part of the island. However, in view of the small size of the island, resorts located outside the contaminated area were also affected by a downturn in visitors. Restaurants, retailers and transport services, such as pleasure boat operators, may also have been affected.

The beach resorts offer accommodation with two or more rooms, which vary from air-conditioned rooms with facilities to communal rooms with no facilities to open air spaces with umbrellas. They also provide restaurant and picnic services used by overnight guests and day excursionists. Most of these businesses are small, privately-owned enterprises with relatively low revenue levels and many experienced considerable hardship. There are a few resorts located on small islets off Guimaras Island, which generally offer a better standard of facility. These cater for a higher percentage of foreign markets and have a totally different operating profile to those located on Guimaras Island.

## Fund workshops

The Funds' Deputy Director/Technical Adviser and one of the Claims Managers, together with a representative of the Shipowners' Club, made two visits to the Philippines in September and October 2006 to conduct a series of claims workshops with representatives of central government, provincial governments and claimants. The meetings were arranged by representatives of Petron Corporation, the charterers of the *Solar 1*, and these accompanied the Club and the Fund throughout their visit.

## Clean-up operations

The Philippine Coast Guard, as the lead government agency for spill response in the

Philippines, took overall control of the clean-up operations. The at-sea response focused on the application of chemical dispersants to the freshly released oil using a light aircraft and vessels. Attempts were made to protect some sensitive sites using commercial booms and home-made booms constructed from wire netting and indigenous materials such as banana leaves and coconut husks.

Petron Corporation assumed the responsibility for organising and managing the shoreline clean-up, which was largely undertaken by residents of affected villages recruited by Petron under a 'cash for work' programme. Around 1 500 individual residents participated in the shoreline clean-up at the height of the response and by the time that the operations were completed in early November 2006 a total of some 63 000 man-days had been expended in these operations.

Shoreline clean-up was undertaken using predominantly manual methods and primarily focused on sandy beaches on the south coast of Guimaras Island. About 2 100 tonnes of oily waste was generated from shoreline cleaning, which was collected from various sites and transported to a cement factory where it was used as an alternative fuel and raw material in the production of cement.

## Proposed operation to remove the remaining cargo from the vessel

**Underwater survey of the wreck**

Shortly after the incident the Shipowners' Club contracted a Japanese salvage company to undertake an underwater survey of the vessel using a remotely operated vehicle (ROV). The purpose of the survey was to search for the vessel to confirm its location, depth and orientation and to assess the risk of further pollution. The Shipowners' Club and the 1992 Fund jointly appointed a marine casualty and salvage expert to attend on-site to supervise the under-water survey and to interpret the survey findings.

The vessel was found in an upright condition on a seabed slope of 6º and with a trim by the stern of about 10º. There was a build-up of 6.5 metres of sediment at the aft end but none at the forward end. A triangular puncture type hole with base dimensions of about 28 centimetres and height of about 15 centimetres was found on the port side aft of the bulkhead between No.1 ballast tank and the port anchor chain locker. Both the port and starboard shell plating showed signs of crumpling near the bottom of the vessel but there were no visible signs of cracks. There were no obvious signs of indentations, folds or cracks on the main deck. All lids of cargo tank hatches were found to be closed with the exception of No.4 port, the lid of which was partially ajar. No oil was seen emanating from this tank, which indicated that the entire contents were missing. Oil was found to be leaking to varying degrees from pipes and vents and the tank lid of No.2 port cargo tank. However, following the closure of a number of vent valves by the ROV the total leakage was reduced to roughly 20 litres per hour.

**Future pollution risk posed by the wreck**

The Shipowners' Club and the 1992 Fund requested the marine casualty and salvage expert along with experts from ITOPF to assess the pollution risk posed by the wreck of the *Solar 1* and whether an operation to remove any remaining oil was technically justified.

In their report the experts noted that the apparent lack of damage to the main deck and the upper hull of the wreck and the absence of visible oil staining or oil collections around the structure suggested that there had not been a major release of oil from the cargo tanks and that the majority of oil may still be on board. However, this was not entirely consistent with observations of the oil at sea shortly after the incident and the extent of shoreline contamination, which suggested that at least 50% of the cargo of 2 081 tonnes of oil had escaped. The experts stated that without knowing the circumstances under which the vessel had sunk it was impossible to assess what kind of hidden structural damage had occurred and whether this could have resulted in substantial amounts of cargo being released. The experts considered whether it would be possible to quantify the remaining oil in the wreck

*The Solar 1 incident resulted in the oiling of mangroves in the Guimaras Straits*

using non-intrusive neutron bombardment technology, but the technique would have necessitated the excavation of the sediment around the hull with the attendant risk of disturbing the vessel.

The experts considered that on the basis of the underwater survey the vessel appeared to be in a stable position and that under the prevailing conditions, movement of the vessel was unlikely. The experts noted, however, that the vessel was located in a seismically active area, which had experienced two major seismic events in the last 50 years.

The experts were of the view that whilst the most likely outcome of leaving the oil in the vessel would be the gradual release of oil over many years through pinholes and cracks as a result of corrosion, a major release of oil due to the effects of a severe seismic event on the structure or stability of the vessel could not be ruled out. The experts noted the sensitivity of Guimaras Island and its vulnerability to pollution from the wreck during the south-west monsoon as demonstrated by the oil released following the incident, which had had a significant effect on economic resources, although it was too early to say what the environmental consequences would be.

The experts concluded that provided that the costs of an operation to remove as much of the remaining cargo from the vessel as possible were not disproportionate to the risks of pollution damage resulting from the further release of oil, such an operation could, in their opinion, be justified.

**Consideration by the 1992 Fund Executive Committee**

At its October 2006 session the 1992 Fund Executive Committee considered the question as to whether an operation to remove the remaining oil from the wreck was technically justified and whether a claim for the cost of such an operation was admissible in principle.

The Director was of the view that it could not be ruled out that a substantial quantity of oil remained in the wreck. The Shipowners' Club and the Fund had explored the possibility of undertaking a study to measure the quantity of

oil remaining on board using non-intrusive technology but that indications were that the cost of such a study would be in the region of US$3 to 4 million (£1.5 to 2 million). In order to measure the oil in the vessel it would be necessary to excavate the sediment in which the stern section was embedded and this could destabilise the vessel with the attendant risk of a significant release of oil. For these reasons the Director had taken the view that a study aimed at quantifying the remaining oil on board would not be justified.

Given the circumstances, in particular the likelihood that a significant quantity of oil remained on board and the fact that the vessel was located in a seismically active area and in close proximity to sensitive economic and environmental resources, the Director had agreed with the experts that provided the cost of an operation to remove as much of the remaining cargo as possible was not disproportionate to the risks of pollution damage resulting from further releases of oil, such a removal operation would be reasonable and the cost of the operation would qualify for compensation.

Early indications were that the costs of operations to quantify and remove any remaining oil would be between US$8 to 12 million (£4 to 6 million) depending on the quantity of oil found on board. However, on the basis of revised proposals for the oil removal operation alone, the final cost would be closer to US$8 million (£4 million), and possibly less.

Early estimates suggested that the level of the losses already sustained from the pollution from the *Solar 1* would be in the range US$5 to 8 million (£2.6 to £4 million), that pollution damage to aquaculture ponds had not been very severe as a result of earlier damage to the ponds caused by a passing typhoon, that the incident had occurred outside the peak tourism and fishing seasons and that a further substantial spill of oil would have the potential to cause at least as much pollution damage as had already occurred. A large number of delegations shared the Director's view that a claim for the cost of removing oil from the *Solar 1* was admissible in principle. The point was made by many delegations that given the likelihood that a significant quantity of oil remained in the wreck, and in view of the seismic activity in the vicinity of the wreck and its close proximity to sensitive economic and environmental resources, the indicative costs of removing the oil were not disproportionate to risks of pollution damage resulting from further releases of oil. The Executive Committee decided that the claim for the cost of removing the oil from the *Solar 1* was admissible in principle.

In November 2006 the Shipowners' Club signed a contract with Saipem Sonsub, an Italian company specialising in deep sea engineering projects using remotely operated vehicles, to remove the remaining oil from the wreck of the *Solar 1*. The operation is due to commence in early March 2007.

## The 1992 Conventions and the applicability of STOPIA 2006

The Republic of the Philippines is a party to the 1992 Civil Liability and Fund Conventions.

The limitation amount applicable to the *Solar 1* in accordance with the 1992 Civil Liability Convention is 4.51 million SDR (£3.5 million). However, the owner of the *Solar 1* was a party to the Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) (see Section 10) whereby the limitation amount applicable to the tanker under the Civil Liability Convention was increased, on a voluntary basis, to 20 million SDR (£15.4 million). The 1992 Fund continued to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeded the limitation amount applicable to the *Solar 1* under the Civil Liability Convention. The 1992 Fund, which is not a party to STOPIA, has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the tanker under the 1992 Civil Liability Convention and the total amount of admissible claims or 20 million SDR (£15.4 million), whichever is the less.

An agreement was reached between the 1992 Fund and the Shipowners' Club that the Fund should assume responsibility for compensation payments once the Club had paid compensation up to the limitation amount applicable to the *Solar 1* under the 1992 Civil Liability Convention. The 1992 Fund would then seek regular reimbursements from the Club up to the STOPIA limit, payments to be made by the Club within two weeks of being invoiced by the Fund. As a result of this procedure it should not be necessary for the Fund to levy contributions unless the total amount of admissible claims exceeds the STOPIA 2006 limit of 20 million SDR (£15.4 million).

## Concerns expressed by the Shipowners' Club

In October 2006 the Shipowners' Club informed the 1992 Fund that on the basis of its investigations into the background of the incident, and in particular issues of causation, it had serious concerns over the shipowner's operation of the vessel, which would warrant the Club revoking insurance cover against the shipowner. The Club also informed the Fund that it had decided, however, not to attempt to avoid any liability pursuant to Article VII.8 of the Civil Liability Convention, which provides, *inter alia*, that the insurer may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the shipowner.

The Shipowners' Club informed the Director that it intended, nevertheless, to reserve its right under Article III.3 of the Civil Liability Convention to oppose claims from claimants whose negligence may have caused or contributed to the pollution damage, and that it did not intend to pay claims made by third parties where it saw evidence of contributory negligence.

It is understood that claims from such third parties are only likely to be in respect of preventive measures.

The Fund's position as regards claims for the cost of preventive measures is however different from that of the shipowner in the light of the last sentence of Article 4.3 of the 1992 Fund Convention which reads 'However there shall be no such exoneration of the Fund with regard to preventive measures'.

In accordance with that provision, the 1992 Fund would therefore be liable to pay any claims for reasonable costs of preventive measures made by third parties even where the negligence of such parties may have caused or contributed to the pollution damage. If the Fund were to pay such claims, it would not, or at least not for the time being, be reimbursed by the Shipowners' Club under the terms of STOPIA 2006.

The 1992 Fund is not at this stage in a position to comment on the allegations by the Shipowners' Club of contributory negligence on the part of third parties and has therefore reserved its position in this respect. However, it intends to examine all the evidence available to establish whether there was contributory negligence on the part of any claimant who undertook preventive measures.

## Claims for compensation

**Clean-up and preventive measures**

By 31 December 2006 claims by three contractors totalling US$6.5 million (£3.3 million) in respect of costs of clean-up at sea had been assessed for a total of US$3.9 million (£2 million) and interim payments totalling US$2.4 million (£1.2 million) had been made.

A claim by Petron Corporation for PHP 160 million (£1.7 million) for the costs of shoreline clean-up had been provisionally assessed for a total of PHP 105 million (£1.1 million) and an interim payment of PHP 60 million (£625 000) had been made by the 1992 Fund. A further interim payment of PHP 45 million (£470 000) would be made early in the New Year. The Shipowners' Club has alleged that Petron Corporation's negligence caused or contributed to the pollution damage and has therefore refused to pay compensation in accordance with the provisions of Article III.3 of the 1992 Civil Liability Convention. The

*Following the spill from the Solar 1 booms were deployed to protect mariculture facilities*

1992 Fund has therefore agreed to pay Petron Corporation's claim pending the outcome of its investigation into the cause of the incident, since the claim relates to the costs of preventive measures.

The Shipowners' Club paid ¥45.1 million (£195 000) for the cost of the underwater survey of the wreck.

**Fisheries and mariculture**

In October 2006 the Shipowners' Club and the 1992 Fund received 13 535 completed claims registration forms from fisherfolk living in the five municipalities on Guimaras Island. The claimants had indicated on the respective form the type of fishing gear they employed, whether or not they owned a boat, and if so, whether it was powered or un-powered, information about the number of days they went fishing per month, the types of fish that were usually caught at the time of the oil spill, and typical market prices.

After the removal of 2 174 duplicate claims the information from each of the remaining 11 361 claim registration forms was entered into a claims database for each of the municipalities. The data was then sorted into a number of different categories of fishing and average daily earnings for each category were computed. The daily earnings were compared with published records and information gathered by the fishery experts during their earlier field surveys. The computed average daily earnings were found to be broadly consistent with published data and were therefore used to assess individual losses of claimants according to the type of fishing activity they were engaged in. Losses for all claimants were assessed on the basis of 12 weeks' interruption of normal fishing, which corresponded to the time taken to complete shoreline clean-up operations. The total losses of the 11 361 claimants were assessed at PHP 120.3 million (£1.3 million). Over 98% of the claimants agreed to settle their claims on the basis of these assessments.

In view of the fact that the claimants were not represented by any fishery association or co-operative that could act on their behalf, the

Shipowners' Club and the 1992 Fund decided to pay each claimant individually. Payments commenced on 14 December 2006 and by 31 December a total of 3 530 claimants in three of the five municipalities had been compensated by the 1992 Fund. The remaining claimants will be paid by the end of January 2007.

In November 2006 the Shipowners' Club and the 1992 Fund received 77 claims from seaweed farmers for alleged damage to their crop caused by the oil. These claims, which total PHP 725 000 (£7 600) are being assessed.

In December 2006 the Shipowners' Club and the 1992 Fund received 90 claims from fish pond operators. The nature of the losses differs among the claimants, with some alleging that oil entered their ponds through broken dykes or open sluices (gates) causing fish mortalities, others claiming losses due to their decision to harvest their fish early to avoid contamination and others claiming for losses due to a reduction in fish prices. The total amount claimed is PHP 316 million (£3.3 million). These claims are being assessed.

**Tourism**

By 31 December 2006 the Shipowners' Club and the 1992 Fund had received 62 claims in the tourism sector, mainly from owners of small resorts and tour boat operators. The total amount claimed was PHP 108 million (£1.1 million). Twenty-four claims had been settled for a total of PHP 594 000 (£6 200). A claim for PHP 100 million (£1 million) for the alleged loss of investment in an island resort over a period of 25 years was rejected on the grounds that such a claim was inadmissible in principle.

It is likely that many of the resort owners will submit claims for further losses during 2007.

**Post-spill studies and reinstatement measures**

In November 2006 the Department of Environment and Natural Resources (DENR) submitted to the Shipowers' Club and the 1992 Fund its proposed financial requirements for undertaking a post-spill environmental monitoring programme and the rehabilitation of coastal natural resources. The proposal, the costs of which had been put at PHP 130 million (£1.4 million), focused on the reinstatement of mangroves affected by the oil, including the establishment of mangrove nurseries to grow mangrove saplings for eventual transplantation in affected areas. The proposal also included various air, water and soil quality monitoring studies.

The Shipowners' Club and the Fund informed DENR that whilst it supported the proposal to monitor the effects of the oil on mangroves in principle, it was too early to decide on the need for reinstatement measures or the establishment of nurseries. However, the Shipowners' Club and the Fund agreed in principle to the proposal to collect oiled and un-oiled debris from the tidal channels of eight mangrove sites in order to promote greater tidal exchange and flushing, which would help to reinstate mangrove trees that were under stress from the oil adhering to their root systems and the surrounding sediments. The Club and the Fund pointed out that DENR would have to provide the initial funding for these measures itself and then claim compensation for the costs after the work was completed. The Club and the Fund also advised DENR that the proposed studies to measure air, water and soil quality were not, in their view, technically justified and that it was unlikely that claims for the costs of these programmes would meet the Fund's admissibility criteria.

## 15.10 SHOSEI MARU

*(Japan, 28 November 2006)*

### The incident

The Japanese tanker *Shosei Maru* (153 GT) collided with the Korean cargo vessel *Trust Busan* (4 690 GT) two kilometres off the port of Teshima, in the Seto Inland Sea in Japan. About 60 tonnes of heavy fuel oil and bunker diesel oil escaped into the sea from a damaged cargo tank and the bunker oil tank of the *Shosei Maru*. The remaining oil onboard was transferred to another

*Clean-up operations in the wake of the Shosei Maru incident included the application of chemical solvents to polluted port facilities*

vessel. The *Shosei Maru* was subsequently towed to the port of Tonosho in Shodoshima.

The 1992 Fund and the insurer of the *Shosei Maru*, the Japan Ship Owners' Mutual Protection and Indemnity Association (Japan P&I Club), appointed a team of surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries and mariculture.

## Impact of the spill

Approximately five kilometres of shoreline composed of rocks, boulders and pebbles, as well as port installations, were polluted to varying degrees. Drifting oil at sea contaminated the hulls of a number of commercial and fishing vessels, including those engaged in the clean-up operations. The oil also affected a number of seaweed cultivation farms as it passed through the supporting structures, contaminating buoys, ropes, nets and the seaweed growing on the nets, which had to be replaced and destroyed.

## Clean-up operations

The owner of the *Shosei Maru* requested the Japan Maritime Disaster Prevention Centre to organise clean-up operations by using a number of private contractors. The Kagawa prefectural government and several local authorities also participated in the operations. One vessel was deployed to apply chemical dispersants on the oil in the water.

On-shore clean-up operations were carried out in four locations in the Kagawa Prefecture. Private contractors were appointed by the shipowner to undertake shoreline clean-up operations using predominantly manual methods to remove bulk oil, followed by high-pressure water washing to remove oil stains. Several oil-stained piers, wharves and seawalls were cleaned by means of high-pressure hot water guns using chemical solvents. The clean-up operations will continue into 2007.

## Claims for compensation

The clean-up and preventive operations will

*The Shosei Maru incident led to the pollution of some five kilometres of rocky shoreline*

result in claims by the Japanese Government, regional and local authorities and claims for costs for cleaning of hulls of commercial and fishing vessels moored in the ports of Tonosho and Kose. Claims are also expected for replacement of seaweed cultivating nets affected by the oil and for loss of earnings due to damaged seaweed. The claims have been provisionally estimated by the Fund's and the Club's surveyors to total some ¥1 142 million (£4.9 million).

The limitation amount applicable to the *Shosei Maru* under the 1992 Civil Liability Convention is 4.51 million SDR (£3.5 million). The ship is not entered into the STOPIA agreement.

The total amount of admissible claims may exceed the limitation amount applied to the *Shosei Maru* under the 1992 Civil Liability Convention. It is possible therefore that the 1992 Fund will be required to pay compensation in respect of this incident.

# ANNEXES

# ANNEX I

## STRUCTURE OF THE IOPC FUNDS

### 1992 FUND GOVERNING BODIES

### ASSEMBLY

Composed of all Member States

***10th and 11th extraordinary sessions and 11th session***

Chairman: Mr Jerry Rysanek (Canada)
Vice-Chairmen: Professor Seiichi Ochiai (Japan)
Mr Edward K. Tawiah (Ghana)

### EXECUTIVE COMMITTEE

***32nd to 34th sessions***

Chairman: Captain Carlos Ormaechea (Uruguay)
Vice-Chairman: Rear-Admiral Giancarlo Olimbo (Italy)

Algeria
Cameroon
Canada
China (Hong Kong Special Administrative Region)
Finland
France
Italy
Portugal
Republic of Korea
Russian Federation
Singapore
Spain
Turkey
United Kingdom
Uruguay

***35th session***

Chairman: Mr John Gillies (Australia)
Vice-Chairman: Mr Léonce Michel Ogandaga Agondjo (Gabon)

Australia
Bahamas
Cameroon
Canada
Denmark
France
Gabon
Germany
Japan
Lithuania
Malaysia
Netherlands
Singapore
Spain
Turkey

## 1971 FUND ADMINISTRATIVE COUNCIL

Composed of all States having at any time been Members of the 1971 Fund

***18th to 20th sessions***

| | |
|---|---|
| Chairman: | Mrs Teresa Martins de Oliveira (Portugal) |
| Vice-Chairman: | Mr John Gillies (Australia) |

## SUPPLEMENTARY FUND ASSEMBLY

***2nd and 3rd extraordinary sessions***

| | |
|---|---|
| Chairman: | Captain Esteban Pacha (Spain) |
| First Vice-Chairman: | Mr Nobuhiro Tsuyuki (Japan) |
| Second Vice-Chairman: | Mrs Birgit Sølling Olsen (Denmark) |

***2nd session***

| | |
|---|---|
| Chairman: | Captain Esteban Pacha (Spain) |

## JOINT SECRETARIAT

***Officers***

| | |
|---|---|
| Director: | Mr Måns Jacobsson (to 31 October 2006) |
| | Mr Willem Oosterveen (from 1 November 2006) |
| Deputy Director/Technical Adviser: | Mr Joe Nichols |
| Legal Counsel: | Mr Masamichi Hasebe (to 30 June 2006) |
| | Mr Nobuhiro Tsuyuki (from 16 October 2006) |
| Personal Assistant to the Director: | Mrs Jill Martinez |
| Assistant to the Deputy Director/Technical Adviser and to the Legal Counsel: | Ms Astrid Richardson |
| Head, Claims Department: | Mr José Maura |
| Claims Manager: | Captain Patrick Joseph |
| Claims Manager: | Ms Chiara Della Mea |
| Claims Administrator: | Ms Chrystelle Clément |
| Claims Administrator: | Ms Ana Cuesta |
| Claims Assistant: | Ms Kirsty Manahan |
| Head, Finance and Administration Department: | Mr Ranjit Pillai |
| IT Manager: | Mr Robert Owen |
| Finance Manager: | Mrs Latha Srinivasan |
| Human Resources Manager: | Mrs Rachel Dockerill |
| Office Manager: | Mr Modesto Zotti |
| IT Administrator: | Mr Johann Spies |
| Finance Assistant: | Mrs Elisabeth Galobardes |

| | |
|---|---|
| Finance Assistant: | Mrs Patricia Morgan |
| Office Assistant: | Mr Laurent Tresse |
| Office Assistant: | Mr Paul Davis (temporary) |
| Receptionist/Travel Assistant: | Ms Alexandra Hardman |
| | |
| Head, External Relations and Conference Department: | Ms Catherine Grey |
| Information Officer: | Ms Stephanie Mulot |
| Translation Administrator (Spanish): | Mrs Natalia Ormrod |
| Translation Administrator (French): | Ms Françoise Ploux |
| Translation Administrator (French): | Ms Aurélie Chollat |
| Conference Administrator: | Mrs Victoria Turner |
| Conference Administrator: | Ms Christine Geffert (temporary) |
| Publications Administrator: | Mr Jonathan North |

**AUDITORS OF THE 1971 FUND, THE 1992 FUND AND THE SUPPLEMENTARY FUND**

Sir John Bourn
Comptroller and Auditor General, United Kingdom

**JOINT AUDIT BODY**

Mr Charles Coppolani (France) (Chairman)
Mr Maurice Jaques (Canada)
Mr Mendim Me Nko'o (Cameroon)
Dr Reinhard Renger (Germany)
Mr Wayne Stuart (Australia)
Professor Hisashi Tanikawa (Japan)
Mr Nigel Macdonald (Outside expert)

**JOINT INVESTMENT ADVISORY BODY**

Mr David Jude
Mr Brian Turner
Mr Simon Whitney-Long

# ANNEX II

## NOTE ON IOPC FUNDS' PUBLISHED FINANCIAL STATEMENTS FOR 2005

The financial statements reproduced in Annexes V to VIII, XI to XIV and XVI are an extract of information contained in the audited financial statements of the International Oil Pollution Compensation Funds 1971, 1992 and Supplementary Fund for the year ended 31 December 2005, approved by the Administrative Council of the 1971 Fund at its 20th session, by the Assembly of the 1992 Fund at its 11th session and by the Assembly of the Supplementary Fund at its 2nd session.

### EXTERNAL AUDITOR'S STATEMENT

The extracts of the financial statements set out in Annexes V to VIII, XI to XIV and XVI are consistent with the audited financial statements of the International Oil Pollution Compensation Funds 1971, 1992 and Supplementary Fund for the year ended 31 December 2005.

**G Miller**
Director
for the Comptroller and Auditor General
National Audit Office, United Kingdom
31 January 2007

# ANNEX III

## REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2005

## CONTENTS



## EXECUTIVE SUMMARY

### Overall results of the Audit

1 We have audited the financial statements of the International Oil Pollution Compensation Fund 1971 in accordance with the Financial Regulations and in conformity with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency and with International Standards on Auditing. I have provided a separate audit opinion and report in relation to the financial statements of the International Oil Pollution Compensation Fund 1992 and the Supplementary Fund.

2 **The audit examination revealed no weaknesses or errors which we considered to be material to the accuracy, completeness and the validity of the financial statements as a whole and I have placed an unqualified audit opinion on the Fund's financial statements for the year ended 31 December 2005.**

3 Observations and recommendations arising from the audit are set out in summary below. A more detailed analysis of key issues is provided in the section of the report entitled Detailed Report Findings.

### Main findings and recommendations

**Financial reporting**

4 The detailed findings of this report provide a commentary on the Fund's financial position. For the financial year ended 31 December 2005, the 1971 Fund reported an excess of income over expenditure (excluding reimbursements to contributors from Major Claims Funds) of £669,740 compared with £13,887,259 in 2004. This decrease arose because no contributions were levied in 2005. The Fund reported an overall deficit of £8,978,843. During the year there was a

significant decrease in claims expenditure and total reimbursements of £9,648,583 were made to contributors in respect of the *Aegean Sea*, *Keumdong N°5*, *Sea Empress* and *Nakhodka* incidents.

5 Overall we found that internal financial controls operated effectively in each of the account areas that we audited; and combined with assurance gained from tests of detail there was sufficient reliable evidence to support our audit opinion.

6 Our work on the Contributor's account highlighted the need for the Fund to increase its efforts in returning a significant contribution balance of approximately £1,000,000 (1992 and 1971 Fund combined) to one of its contributors. Payments became due in March 2004 and March 2005, based on decisions made by the governing bodies at their October 2003 and October 2004 sessions respectively in respect of the closure of certain Major Claims Funds.

7 The establishment of the Supplementary Fund in the period led us to review the rules and regulations in operation at the Funds. From this review we recommended that the Director consider the recoverability of outstanding contributions, as modifications to the Financial Regulations now give him the power to waive receivables where this is in the interest of the Fund. This is particularly relevant to the 1971 Fund during the winding up process.

**Financial management issues**

8 In addition to the work necessary to provide assurance on the financial statements, we reviewed the major areas of the Secretariat's operations and provided guidance and support to the Secretariat as required. In our report on the 1992 Fund, we have reviewed and reported on issues relating to:

- The investigation of anonymous allegations where we identified no evidence of impropriety;
- Procurement procedures and the need to document these to ensure consistency and business continuity; and
- Risk management, where the Funds have made significant progress in identifying risks to the business.

## DETAILED REPORT FINDINGS

### Financial reporting

**Financial statements and accounting**

9 The Fund continued to provide timely and well presented financial statements supported by well maintained accounting records. During the course of the audit, we recommended that the format of the balance sheet for the 1971 Fund should be enhanced to improve clarity, and the organisation has implemented these changes.

**Income and expenditure**

10 During the financial period 2005, the 1971 Fund reported a General Fund operating surplus of £357,859 a slight decrease on the surplus of £377,760 in 2004. When the respective surpluses and deficits on the General Fund and Major Claims Funds are taken into account, the 1971 Fund reported an overall deficit for the year of £8,978,843.

**Contributions income**

11 The 1971 Fund levied no contributions in 2005, however reimbursements to contributors totalled £9,648,583 in relation to refunds from the *Aegean Sea*, *Keumdong N°.5*, *Sea Empress* and *Nakhodka* Major Claims Funds.

**Miscellaneous income**

12 Miscellaneous income received in 2005 amounted to £1,231,605 (2004: £3,605,765). This decrease reflected large reimbursements in 2004 and 2005 which reduced the cash balance available to invest. Interest income from investments accounted for £671,720. The other main source of income for 2005 was the closure and transfer of un-reimbursed balances from the four Major Claims Funds to the General Fund, which provided £553,479 of miscellaneous income in the period.

**Secretariat Expenses**

13 Secretariat expenses amounted to £337,500 which represented a slight reduction on the 2004 figure of £357,145. This cost comprises mainly the agreed management fee paid to the 1992 Fund of £325,000, which is approximately 10 per cent of the budgeted obligations for the joint cost of running the Secretariat, in line with the 1971 Fund Administrative Council and the 1992 Fund Assembly decisions.

**Claims and Claims Related Expenses**

14 There was a significant reduction in the amount of compensation paid by the 1971 Fund in 2005. Only £15,764 was paid out, compared with £5,511,076 in 2004. This was due to a significant reduction in *Nissos Amorgos* payments which had accounted for £4,716,093 of claims expenditure in 2004. This downturn is expected as the Fund is no longer open to new incidents and is in the process of being wound up.

15 Claims related expenditure consisted mainly of technical and legal fees and amounted to £208,601 (£576,091in 2004). The fall in expenditure reflects a reduction in the number of incidents as Major Claims Funds are closed.

**Assets and liabilities**

16 Cash held by the 1971 Fund amounted to £12,301,681 at 31 December 2005, compared with £22,350,629 for the previous year. This reduction reflected the reimbursement of contributions made in March 2005.

17 The level of outstanding assessed contributions decreased from £374,738 in 2004 to £368,769 in 2005. Even though outstanding contributions remained low in percentage terms, we would continue to encourage all Member States to assist the Funds to obtain outstanding amounts from contributors in their respective States; and for the Fund to continue to actively seek the payment of outstanding balances.

18 The contributors' account balance has remained relatively constant at £2,024,968 (2004: £2,253,382). This balance relates to amounts held by the Fund as credit balances pending allocation to future levies or requests for repayment.

**Contingent liabilities**

19 Schedule III to the financial statements discloses the contingent liabilities of the 1971 Fund, which are defined in the accounting policies as all known or likely claims against the 1971 Fund

and claims related expenditures estimated for the next financial year. Contingent liabilities as at 31st December 2005 have been estimated at £90,320,000.

20 Such liabilities will need to be funded through further levies of contributions to Major Claims Funds. As at 31st December 2005, the *Nissos Amorgos* Major Claims Fund recorded a balance of £2,813,426 and the *Pontoon 300* Major Claims Fund had a balance of £2,592,385. Both of these balances are significantly lower than the estimated contingent liability. No Major Claims Funds have been established for the *Alambra* or *Iliad* incidents, although both may require additional contributions to be levied if all relevant contingent liabilities mature.

## Financial management issues

**Internal controls**

21 As part of our audit we review the Fund's internal controls, established by management to ensure the regularity of transactions and to provide effective stewardship of resources. We found these arrangements to be satisfactory for the purpose of supporting our audit opinion.

**Contributor's account**

22 The Contributors' account in the Fund's books records over-payments and reimbursements of levy due to Fund contributors which accrue interest at the London clearing bank base rate. As part of our contributions testing, we identified that one contributor was owed £487,209.13 from the 1971 Fund (and £509,071.60 from the 1992 Fund). Oil report documentation for the contributor confirmed that the 2005 credit invoice had not been sent to the contributor in November 2004 and was still on file.

23 The Funds experienced difficulty in returning the contributions with interest, as the company was a joint venture that had ceased to exist and it was unclear how much to pay each parent company. The Secretariat's External Relations Section informed us that the parent companies were aware of the credit balance but had not engaged the Funds to resolve the matter. Although this situation is complex, we presume the Funds have a responsibility to return this money to contributors.

***Recommendation 1: We recommend that the Secretariat review the position in relation to these credit balances with a view to taking appropriate action and resolving this issue.***

**Winding up of the 1971 Fund**

24 The 1971 Fund Convention ceased to be in force as from 24th May 2002. Although the 1971 Fund will not be called upon to make compensation payments on any new incidents, the final settlement and closure of outstanding incidents could take many years. We still believe that it is appropriate to prepare the financial statements of the 1971 Fund on a going concern basis, as it will continue its operations for the foreseeable future.

25 Our review of the rules and regulations of the Funds (which we reported in the 2005 Audit Report of the 1992 Fund) highlighted the fact that modifications to Financial Regulation 11.5 give the Director the right to waive the recovery of funds due if this is appropriate and in the interests of the Fund. This is particularly relevant to the 1971 Fund as the Secretariat continues the process of winding up the Fund, and should be considered when evaluating the recoverability of old outstanding contributions due to the 1971 Fund. Accounting for contributions receivable where there is no realistic prospect of recovery may give rise to an overstatement of assets.

*Recommendation 2: We recommend that the Secretariat carry out a review of the recoverability of all contributions outstanding to the 1971 Fund, to identify receivables that are unlikely to be recovered. The Director should then consider whether write off is appropriate in order for the financial statements to present fairly the financial position.*

**Cases of Fraud, Presumptive Fraud or Money Laundering**

26 No cases of fraud, presumptive fraud or money laundering were reported to us by the Secretariat or identified in the items examined as part of the audit. We have commented in the External Auditor's report on the 1992 Fund about the outcome of our audit investigation into anonymous allegations of corruption and bribery involving a senior member of the Secretariat, from which there are no issues to draw to the attention of the Members.

## PROGRESS ON PRIOR YEAR AUDIT RECOMMENDATIONS

27 There were no matters arising from our 2004 audit that were specific to the 1971 Fund; and we have commented on the progress made in relation to previous recommendations in our audit report on the 1992 Fund. Previous external audit reports focused on governance issues and we have been pleased to note that in 2005 the Director issued a whistle-blowing policy, and in early 2006 implemented a register of interests and receipt of gifts and hospitality. We have also noted progress on risk management. The inclusion of the Director's Statement on Internal Control in the 2005 statements and the issue of a Code of Conduct in June 2006 also demonstrate the Fund's commitment to acting on the External Auditor's recommendations.

## ACKNOWLEDGEMENT

28 We are grateful for the continued assistance and co-operation provided by the Director and staff of the 1971 Fund Secretariat during our audit.

**Sir John Bourn**
Comptroller and Auditor General, United Kingdom
External Auditor
June 2006

# ANNEX I: SCOPE AND AUDIT APPROACH

## Audit scope and objectives

Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1971 (1971 Fund) for the financial period ended 31 December 2005 in accordance with Financial Regulation 13. The main purpose of the audit was to enable us to form an opinion on whether the financial statements fairly presented the Fund's financial position, its surplus, funds and cash flows for the year ended 31 December 2005; and whether they had been properly prepared in accordance with the Financial Regulations.

## Audit standards

Our audit was conducted in accordance with International Standards on Auditing as issued by the International Auditing and Assurance Standards Board. These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

## Audit approach

Our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made

Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the relevant financial regulations and governing body directives; and that the audited accounts were fairly presented.

# ANNEX IV

## FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1971 FOR THE YEAR ENDED 31 DECEMBER 2005 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1971

I have audited the accompanying financial statements, comprising Statements I to VI, Schedules I to III and the supporting Notes of the International Oil Pollution Compensation Fund 1971 for the financial period ended 31 December 2005. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2005 and the results of operations and cash flows for the period then ended in accordance with the 1971 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1971 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

**Sir John Bourn**
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2006

# ANNEX V

## GENERAL FUND
## 1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | 2005 £ | £ | 2004 £ | £ |
|---|---|---|---|---|
| **INCOME** | | | | |
| **Contributions** | | | | |
| Adjustment to prior years' assessment | - | | 758 | |
| **Total contributions** | | - | | **758** |
| **Miscellaneous** | | | | |
| Sundry income | 2 789 | | 39 513 | |
| Transfer from *Aegean Sea* MCF | 132 467 | | - | |
| Transfer from *Keumdong N°5* MCF | 169 762 | | - | |
| Transfer from *Sea Empress* MCF | 120 417 | | - | |
| Transfer from *Nakhodka* MCF | 130 833 | | - | |
| Transfer from *Sea Prince* MCF | - | | 126 405 | |
| Transfer from *Yeo Myung* MCF | - | | 110 723 | |
| Transfer from *Yuil N°1* MCF | - | | 244 485 | |
| Transfer from *Osung N°3* MCF | - | | 147 449 | |
| Interest on loan to *Vistabella* MCF | - | | 2 192 | |
| Interest on loan to *Pontoon 300* MCF | - | | 3 031 | |
| Interest on loan to *Nissos Amorgos* MCF | - | | 2 317 | |
| Interest on overdue contributions | 2 023 | | 50 882 | |
| Interest on investments | 269 566 | | 204 305 | |
| **Total miscellaneous** | | **827 857** | | **931 302** |
| **TOTAL INCOME** | | **827 857** | | **932 060** |
| **EXPENDITURE** | | | | |
| **Secretariat expenses** | | | | |
| Obligations incurred | | **337 500** | | **357 145** |
| **Claims** | | | | |
| Compensation | | - | | **2 482** |
| **Claims-related expenses** | | | | |
| Fees | 130 552 | | 132 586 | |
| Travel | 1 860 | | 1 468 | |
| Miscellaneous | 86 | | 81 | |
| Recovery from insurer | - | | (14 482) | |
| **Total claims-related expenses** | | **132 498** | | **119 653** |
| Transfer to *Braer* MCF | | - | | **75 020** |
| **TOTAL EXPENDITURE** | | **469 998** | | **554 300** |
| (Shortfall)/excess of income over expenditure | | 357 859 | | 377 760 |
| Balance b/f: 1 January | | 4 891 635 | | 4 513 875 |
| **Balance as at 31 December** | | **5 249 494** | | **4 891 635** |

# ANNEX VI

## MAJOR CLAIMS FUNDS
## 1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | *Aegean Sea* | | *Keumdong N°5* | |
|---|---|---|---|---|
| | **2005** | **2004** | **2005** | **2004** |
| | **£** | **£** | **£** | **£** |
| **INCOME** | | | | |
| **Contributions** | | | | |
| Reimbursement to contributors | (799 990) | (17 581 431) | (8 099 958) | - |
| **Total contributions** | **(799 990)** | **(17 581 431)** | **(8 099 958)** | **-** |
| **Miscellaneous** | | | | |
| Sundry income | - | 3 175 | - | - |
| Interest on overdue contributions | 577 | 36 741 | 1 017 | 5 737 |
| Interest on investments | 10 725 | 268 972 | 99 585 | 373 809 |
| Interest on Court Deposit | - | - | - | 64 283 |
| Refund of Court Deposit | - | - | - | 795 020 |
| Interest on loans to *Osung N°3* MCF | - | 7 524 | - | - |
| Interest on loan to *Nissos Amorgos* MCF | - | - | - | - |
| **Total miscellaneous** | **11 302** | **316 412** | **100 602** | **1 238 849** |
| **TOTAL INCOME** | **(788 688)** | **(17 265 019)** | **(7 999 356)** | **1 238 849** |
| **EXPENDITURE** | | | | |
| Compensation/Indemnification | - | - | - | 84 778 |
| Fees | - | 7 128 | - | 76 |
| Interest on loan from General Fund | - | - | - | - |
| Travel | - | - | - | - |
| Miscellaneous | - | 16 | - | 7 |
| **TOTAL EXPENDITURE** | **-** | **7 144** | **-** | **84 861** |
| (Shortfall)/excess of income over expenditure | (788 688) | (17 272 163) | (7 999 356) | 1 153 988 |
| Exchange adjustment | - | (39) | - | (57 701) |
| Balance b/f: 1 January | 921 155 | 18 193 357 | 8 169 118 | 7 072 831 |
| Transfer to General Fund | (132 467) | - | (169 762) | - |
| **Balance as at 31 December** | **-** | **921 155** | **-** | **8 169 118** |

| *Sea Empress* | | *Nakhodka* | |
|---|---|---|---|
| **2005** | **2004** | **2005** | **2004** |
| **£** | **£** | **£** | **£** |
| | | | |
| (348 576) | (18 327 566) | (400 059) | (14 699 973) |
| **(348 576)** | **(18 327 566)** | **(400 059)** | **(14 699 973)** |
| - | - | - | - |
| - | 6 850 | - | 46 293 |
| 5 690 | 286 263 | 6 327 | 177 231 |
| - | - | - | - |
| - | - | - | - |
| - | - | - | - |
| - | - | - | 24 958 |
| **5 690** | **293 113** | **6 327** | **248 482** |
| **(342 886)** | **(18 034 453)** | **(393 732)** | **(14 451 491)** |
| | | | |
| - | 1 331 | - | - |
| - | - | - | - |
| - | - | - | - |
| - | - | - | - |
| - | - | - | - |
| **-** | **1 331** | **-** | **-** |
| (342 886) | (18 035 784) | (393 732) | (14 451 491) |
| - | - | - | - |
| 463 303 | 18 499 087 | 524 565 | 14 976 056 |
| (120 417) | - | (130 833) | - |
| **-** | **463 303** | **-** | **524 565** |

# ANNEX VI

## MAJOR CLAIMS FUNDS
## 1971 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | *Nissos Amorgos* | | *Vistabella* | |
|---|---|---|---|---|
| | **2005** | **2004** | **2005** | **2004** |
| | **£** | **£** | **£** | **£** |
| **INCOME** | | | | |
| **Contributions** | | | | |
| Contributions | - | 11 499 980 | - | 600 033 |
| **Total contributions** | **-** | **11 499 980** | **-** | **600 033** |
| **Miscellaneous** | | | | |
| Interest on overdue contributions | - | 1 114 | - | - |
| Less interest on overdue contributions waived | - | - | - | - |
| Interest on investments | 143 795 | 205 345 | 3 324 | 2 438 |
| **Total miscellaneous** | **143 795** | **206 459** | **3 324** | **602 471** |
| **TOTAL INCOME** | **143 795** | **11 706 439** | **3 324** | **602 471** |
| **EXPENDITURE** | | | | |
| Compensation/Indemnification | 15 764 | 4 716 093 | - | - |
| Fees | 34 873 | 104 799 | - | 14 372 |
| Interest on loan from General Fund | - | 2 317 | - | 2 192 |
| Interest on loan from *Nakhodka* MCF | - | 24 958 | - | - |
| Travel | - | 16 511 | - | - |
| Miscellaneous | 48 | 287 | - | - |
| **TOTAL EXPENDITURE** | **50 685** | **4 864 965** | **-** | **16 564** |
| (Shortfall)/excess of income over expenditure | 93 110 | 6 841 474 | 3 324 | 585 907 |
| Balance b/f: 1 January | 2 720 316 | (4 121 158) | 70 072 | (515 835) |
| **Balance as at 31 December** | **2 813 426** | **2 720 316** | **73 396** | **70 072** |

| | *Pontoon 300* | |
|---|---|---|
| | **2005** | **2004** |
| | **£** | **£** |
| | | |
| | - | 3 000 024 |
| | - | **3 000 024** |
| | | |
| | - | 110 |
| | - | (2) |
| | 132 708 | 86 294 |
| | **132 708** | **86 402** |
| | **132 708** | **3 086 426** |
| | | |
| | - | - |
| | 41 114 | 72 012 |
| | - | 3 031 |
| | - | - |
| | - | 11 432 |
| | 68 | 283 |
| | **41 182** | **86 758** |
| | 91 526 | 2 999 668 |
| | 2 500 859 | (498 809) |
| | **2 592 385** | **2 500 859** |

# ANNEX VII

## BALANCE SHEET OF THE 1971 FUND AS AT 31 DECEMBER 2005

| | General Fund<br>£ | *Vistabella*<br>£ |
|---|---|---|
| **ASSETS** | | |
| Cash at banks and in hand | 6 834 532 | 65 564 |
| Contributions outstanding | 356 926 | 7 832 |
| Interest on overdue contributions outstanding | 103 581 | - |
| Tax recoverable | 270 | - |
| Miscellaneous receivable | - | - |
| **TOTAL ASSETS** | **7 295 309** | **73 396** |
| **LIABILITIES** | | |
| Unliquidated obligations | 12 500 | - |
| Contributors' account | 2 024 968 | - |
| Due to 1992 Fund | 8 347 | - |
| **TOTAL LIABILITIES** | **2 045 815** | **-** |
| **FUNDS' BALANCES** | | |
| Working capital | 5 000 000 | - |
| Surplus / (Deficit) | 249 494 | 73 396 |
| **GENERAL FUND & MAJOR CLAIMS FUNDS (MCFs) BALANCES** | **5 249 494** | **73 396** |
| **TOTAL LIABILITIES AND GENERAL FUND & MCFs BALANCES** | **7 295 309** | **73 396** |

| *Pontoon 300* £ | *Nissos Amorgos* £ | 2005 Total £ | 2004 Total £ |
|---|---|---|---|
| | | | |
| 2 591 095 | 2 810 490 | 12 301 681 | 22 350 629 |
| 1 290 | 2 721 | 368 769 | 374 738 |
| - | 215 | 103 796 | 108 583 |
| - | - | 270 | 2 625 |
| - | - | - | 4 136 |
| **2 592 385** | **2 813 426** | **12 774 516** | **22 840 711** |
| | | | |
| - | - | 12 500 | - |
| - | - | 2 024 968 | 2 253 382 |
| - | - | 8 347 | 326 306 |
| **-** | **-** | **2 045 815** | **2 579 688** |
| | | | |
| - | - | 5 000 000 | 5 000 000 |
| 2 592 385 | 2 813 426 | 5 728 701 | 15 261 023 |
| **2 592 385** | **2 813 426** | **10 728 701** | **20 261 023** |
| **2 592 385** | **2 813 426** | **12 774 516** | **22 840 711** |

# ANNEX VIII

## CASH FLOW STATEMENT OF THE 1971 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | 2005 | | 2004 | |
|---|---|---|---|---|
| | £ | £ | £ | £ |
| Cash as at 1 January | | 22 350 629 | | 75 867 272 |
| **OPERATING ACTIVITIES** | | | | |
| Operating Surplus/(Deficit) | (10 204 042) | | (58 145 359) | |
| (Increase)/Decrease in Debtors | 17 247 | | 454 238 | |
| Increase/(Decrease) in Creditors | (630 650) | | 2 180 516 | |
| Net cash flow from operating activities | | (10 817 445) | | (55 510 605) |
| **RETURNS ON INVESTMENTS** | | | | |
| Interest on investments | 768 497 | | 1 993 962 | |
| Net cash inflow from returns on investments | | 768 497 | | 1 993 962 |
| **Cash as at 31 December** | | **12 301 681** | | **22 350 629** |

# ANNEX IX

**REPORT OF THE EXTERNAL AUDITOR ON THE FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE FINANCIAL PERIOD 1 JANUARY TO 31 DECEMBER 2005**

## CONTENTS



## EXECUTIVE SUMMARY

### Overall results of the Audit

1 We have audited the Financial Statements of the International Oil Pollution Compensation Fund 1992 in accordance with the Financial Regulations and in conformity with the Common Auditing Standards of the Panel of External Auditors of the United Nations, the Specialized Agencies and the International Atomic Energy Agency and with International Standards on Auditing. I have provided a separate audit opinion and report in relation to the Financial Statements of the International Oil Pollution Compensation Fund 1971 and the Supplementary Fund.

2 **The audit examination revealed no weaknesses or errors which we considered to be material to the accuracy, completeness and the validity of the financial statements as a whole and I have placed an unqualified audit opinion on the Fund's financial statements for the year ended 31 December 2005.**

3 Observations and recommendations arising from the audit are set out in summary below. A more detailed analysis of key issues is provided in the section of the report entitled Detailed Report Findings.

### Main findings and recommendations

**Financial Reporting**

4 The detailed findings of this report provide a commentary on the Fund's financial position. For the financial year ended 31 December 2005, the 1992 Fund reported an excess of income over

expenditure (excluding the Provident Fund) of £24,833,625, compared with £32,043,517 in 2004. During the year there was an increase in claims expenditure mainly due to increased payments in respect of the *Erika* incident and a reimbursement of £599,995 was made in respect of the *Nakhodka* incident.

5 Overall we found that internal financial controls operated effectively in each of the account areas that we audited and combined with assurance gained from tests of detail there was sufficient reliable evidence to support our audit opinion.

6 Our work on the contributor's account highlighted the need for the Fund to increase its efforts in returning to one of its contributors a significant contribution balance of approximately £1,000,000 for the 1992 and 1971 Funds combined. Repayments became due in March 2004 and March 2005, based on decisions made by the governing bodies at their October 2003 and October 2004 sessions respectively in respect of the closure of certain Major Claims Funds.

7 The establishment of the Supplementary Fund in the accounting period led us to review the rules and regulations in operation at the Funds. From this review we recommend that the Director considers the recoverability of outstanding contributions, since modifications to the Financial Regulations now give him the power to waive receivables where this is in the interests of the Fund.

8 We examined the ongoing use of investment products by the Fund, such as dual currency deposits and participating forwards. We discussed with the Investment Advisory Body the appropriateness of the continued use of participating forwards in its investment strategy, as this can result in a commitment to purchase currency above the prevailing rate. This led us to recommend improved disclosure of the nature and performance of such products, which has been included in the Notes to the financial statements.

**Financial management issues**

9 In addition to the work necessary to provide assurance on the financial statements, we reviewed the major areas of the Secretariat's operations and provided guidance and support to the Secretariat as required.

10 In September 2005, anonymous allegations were made which suggested an inappropriate commercial relationship between a senior employee of the Secretariat and an external third party. At the request of the Director, we investigated the allegations, reviewing all relevant transactions between the Fund and the third party; the sequence of events; and relevant documentary evidence. We found no evidence of impropriety or irregularity in the accounts of the IOPC Funds. We have made recommendations to improve the Secretariat's arrangements relating to business dealings in circumstances which could present issues of conflicts of interest.

11 As part of our audit, we carried out a review of procurement practice and have made recommendations to improve transparency in the selection of service providers and to ensure business continuity.

12 We have noted the Secretariat's continued progress in identifying risks to the business and that this exercise is still on schedule for completion prior to the arrival of the new Director. We encourage the Fund to use the full risk register to identify key risks to the business where both the impact and likelihood of the risk is high. Such risks should be actively managed to mitigate their impact while lesser risks should be periodically monitored to update the risk register.

# DETAILED REPORT FINDINGS

## Financial reporting

**Financial Statements and Accounting**

13 The Fund continued to provide timely and well presented financial statements supported by well maintained accounting records. During the course of the audit we identified a number of areas where disclosure could be improved and we recommended the following changes which have been implemented by the Secretariat:

- Enhancing the balance sheet format to improve clarity.
- Improving disclosure of financial instruments used, detailing the nature, value and performance of such instruments in the period.
- Disclosure of rental subsidy in relation to the Funds' agreement with the United Kingdom government.

**Income and expenditure**

14 During the financial period 2005, the 1992 Fund reported a General Fund operating surplus of £4,008,178, a slight increase on the surplus of £3,798,597 in 2004. When the respective surpluses and deficits on the General Fund and Major Claims Funds are taken into account (excluding the Provident Fund), the 1992 Fund reported an overall surplus for the year of £24,833,625 (2004: £32,043,517).

**Contributions income**

15 The 1992 Fund received contributions income of £38,685,328 during the period, as a result of the levies due for the General Fund and the Prestige Major Claims Fund. A reimbursement to contributors of £599,995 was made in relation to the *Nakhodka* incident during 2005.

**Miscellaneous income**

16 Miscellaneous income received in 2005, including interest relating to the Provident Fund, amounted to £7,119,811 (£5,382,268 in 2004). Interest from investments accounted for £6,402,250 of total miscellaneous income, which represents an increase on the previous year as a result of the timing of investment maturity dates, increased interest rates and cash available for investment. The value of interest income reflects the accounting policy of recording interest on the basis of cash received, rather than on an accruals basis.

**Secretariat expenses**

17 Obligations incurred by the 1992 Fund for joint Secretariat expenses totalled £2,859,699 for Chapters I-VI, representing an under spend against the approved budgetary appropriations of £512,901. This under spend is accounted for by lower than expected personnel costs (£319,455) and lower expenditure on public information (£57,785) and office machines (£18,508).

18 Total obligations for the 1992 Fund were £2,847,199, representing an increase of £237,586 or 9.1 per cent on the previous year's obligations.

**Claims and claims related expenses**

19 There was an increase in the value of compensation payments during 2005, which totalled £12,644,168, compared with £9,555,715 in 2004. This increase was attributed mainly to increased compensation payments of £11,718,025 in relation to the *Erika* incident (2004: £7,502,681). There was also a significant reduction in the payment of claims from the General Fund, where payments totalled £304,827.

20 Claims related expenditure consisted mainly of technical and legal fees and amounted to £4,709,072 (£4,990,379 in 2004), reflecting the fact that claims related activity in 2005 remained broadly similar for the *Prestige* incident with a slight decrease in activity for the *Erika* incident.

**Staff Provident Fund**

21 The balance on the Staff Provident Fund at the year end stood at £2,382,373. This represents an increase of 21.8 per cent on the closing balance for 2004. The increase was due to a reduction in withdrawals from £288,079 in 2004 to £109,973 in 2005, comprising housing loan grants totalling £45,000 and withdrawals on separation of £64,973.

22 The Provident Fund earned interest of £131,489 during the year, which represented a return on investment of 6.1 per cent on the average net assets held throughout the year.

**Assets and liabilities**

23 Cash held by the 1992 Fund amounted to £146,305,576 as at 31 December 2005. The level of outstanding assessed contributions has decreased from £656,728 in 2004 to £376,482 at the end of 2005, and consisted mainly of amounts still due in respect of the *Prestige* Major Claims Fund. Even though the contributions outstanding remained low in percentage terms, we would continue to encourage all Member States to assist the Funds to obtain outstanding amounts from contributors in their respective States; and for the Fund to continue to actively seek the payment of outstanding balances. The contributors' account balance remained relatively constant at £1,036,045 (2004: £1,077,283).

**Contingent liabilities**

24 Schedule III to the financial statements discloses the contingent liabilities of the 1992 Fund, which are defined in the accounting policies as all known or likely claims against the 1992 Fund and claims related expenditures estimated for the next financial year. Contingent liabilities as at 31 December 2005 have been estimated at £120,640,000.

25 As at 31 December 2005 the *Erika* Major Claims Fund had a balance of £49,659,743 and the *Prestige* Major Claims Fund had a balance of £65,130,461, both of which were higher than the estimated contingent liabilities relating to these incidents at 31 December 2005. Liabilities for the remaining incidents amounting to £7,340,000 are covered by the General Fund.

**Other financial matters: fraud, presumptive fraud or money laundering**

26 No cases of fraud, presumptive fraud or money laundering were reported to us by the Secretariat or identified in the items examined as part of the audit of the 2005 financial period.

## Financial management issues

**Internal controls**

27 As part of our audit we reviewed the Fund's internal controls, established by management to ensure the regularity of transactions and to provide effective stewardship of resources. We found the controls in operation to be effective for the purpose of supporting our audit opinion.

**Claims office review**

28 As part of our expenditure testing we reviewed expenditure from the Lorient claims handling office. Our testing revealed that the office, established in January 2000, had no written contract stipulating terms of engagement, although a verbal agreement had been reached on the contractual arrangements.

29 The audit review was extended to the other two claims offices at La Coruna and Bordeaux. These offices were both established under written contract. While we recognise that all subsequent claims offices have been set up with contracts and pricing structures in place, there remains a risk that the lack of a written contract and clear pricing structure with the Lorient claims handling office could present issues for the organisation.

30 However, our review indicated that the current level of payments and running costs are low for all offices. Combined with other controls confirmed to be in operation – monthly bank reconciliation by staff in London; limits on cheque signatories with the claims offices' banks; quarterly budgets for running costs; running cost invoices supported by receipts – we believe there is an adequate level of assurance in relation to controls over the regularity of claims office expenditure.

**Contributor's account**

31 The Contributor's account in the Fund's books records overpayments and reimbursements of levies due to Fund contributors which accrues interest at the London clearing bank base rate. As part of contributions testing, we identified that one contributor was owed £509,071.60 from the 1992 Fund (and £487,209.13 from the 1971 Fund). Oil report documentation for the contributor confirmed that the 2005 credit invoice had not been sent to the contributor in November 2004 and was still on file.

32 The Funds experienced difficulty in returning the contributions with interest, as the company was a joint venture that had ceased to exist and it was unclear how much to pay each parent company. The Secretariat's External Relations Section informed us that the parent companies were aware of the credit balance but had not engaged the Funds to resolve the matter. Although this situation is complex, we presume the Funds have a responsibility to return this money to contributors.

***Recommendation 1: We recommend that the Secretariat review the position in relation to these credit balances with a view to taking appropriate action and resolving this issue.***

**Establishment of the Supplementary Fund and amendments to regulations and rules**

33 The Supplementary Fund to the 1992 Fund was established on 3 March 2005. The establishment of this Fund required the issue of new rules and regulations and the modification of existing ones that govern the Funds and the Secretariat. In the External Auditor's report for 2004, we had reported on a review of the Financial and Internal Regulations of the 1992 Fund. For 2005 we further reviewed the position in relation to the new Supplementary Fund. This work included a review of Internal and Financial Regulations, Rules of Procedure, Staff Rules and Regulations, administrative instructions and circulars, Headquarters Agreements (1971 Fund and 1992 Fund) and the accounting policies of the Supplementary Fund.

34 In addition to including relevant references to the Supplementary Fund, the 1992 Fund's Internal Regulations were modified to improve the Director's ability to follow up unpaid contributions and reflect his authority to make final settlement of claims for individual and small businesses up to an aggregate amount of 1million in Special Drawing Rights. The key difference in the Supplementary Fund's Internal Regulations as adopted in 2005 is the inclusion of Regulation 8 which deals with the denying of compensation to victims in a given State due to non-submission of oil reports in respect of that State, as provided under Article 15.2 of its Protocol.

35 Other than editorial modifications to include references to the Supplementary Fund, key changes to the 1992 and 1971 Fund Financial Regulations relate to investment limits, based on advice from the Funds' Joint Investment Advisory Body. These changes provide greater investment flexibility for the reducing balance of the 1971 Fund, and increase the investment limit for a single financial institution from £15 million to £25 million where the Funds' combined assets exceed £300 million.

36 Regulation 11.5 of the 1992 and 1971 Funds' Financial Regulations now allows the Director to waive the right to the recovery of funds due, where this is appropriate and in the interests of the organisation. This is a significant change to the regulations, which previously provided only for ex-gratia payments. The Director's increased authority should be taken into account when evaluating the recoverability of old outstanding contributions. This is particularly relevant to the 1971 Fund as the Secretariat continues the process of winding up that Fund. The Financial Regulations of the Supplementary Fund are consistent with 1992 and 1971 Fund Regulations, and in accordance with its own protocol.

***Recommendation 2: We recommend that the Secretariat carry out a review of the recoverability of all contributions outstanding to the1992 Fund, to identify receivables that are unlikely to be recovered. The Director should then consider whether write off is appropriate for the financial statements to continue to present fairly the financial position.***

37 The Staff Regulations for the Secretariat were updated in the period audited to reflect the existence of the Supplementary Fund. Staff Rules were updated to incorporate the Supplementary Fund, and professional and general service staff salary and allowance figures from the International Maritime Organization (IMO), as stipulated in Staff Regulation 17.

38 The administrative instructions were updated in October 2005 to reflect changes in regulations and references to the Supplementary Fund. One of the changes to the administrative instructions included a requirement for dual signatories on all payments rather than merely those in excess of £10,000, in accordance with the amended Financial Regulation.

39 At the time of finalising this report, a draft Headquarters Agreement for the Supplementary Fund and proposals for a revised text of the 1992 Fund Headquarters Agreement were under review and expected to be available for approval at the Funds' Assemblies in October 2006.

40 We reviewed the accounting policies and presentation of the Supplementary Fund financial statements against the requirements of the United Nations System Accounting Standards with satisfactory results. No cash flow statement has been produced for the Supplementary Fund as it is currently funded by borrowing from the 1992 Fund in accordance with the decisions of the 1992 Fund and Supplementary Fund Assemblies.

**Financial instruments**

41 The 1992 Fund continues to utilise dual currency deposits to increase investment yield while utilising options for repayment of investments in Euros or Sterling. We reported for 2004 that the Secretariat had adequate mechanisms to effectively monitor the performance of these products; and we recommended that the Funds should provide more informative disclosures in the financial statements in relation to these deposits. As part of our 2005 audit, we advised on the content of a new financial instruments note, Note 25 to the financial statements. The dual currency deposits maturing in 2005 provided an additional £134,350 in investment income when compared to comparative term deposits.

42 In 2005, the 1992 Fund engaged in its first use of participating forwards as an investment vehicle at the recommendation of the Investment Advisory Body. On 9 May 2005, the 1992 Fund concluded a participating forward foreign exchange transaction, which gave the Fund the option of purchasing Euros 30 million for pounds sterling on 10 November 2005 at an exchange rate of £0.700 for each Euro, if the rate at that date was above the set exchange rate. The resulting purchase of Euros 15.3 million at that date would have had an additional notional cost to the Funds of approximately £367,000 when compared to the prevailing rate. The Secretariat consider that the participating forward enabled the Fund to protect itself against undue foreign exchange movements and allowed the purchase of Euros during the period at lower rates than would otherwise have been the case.

43 We discussed the appropriateness of using such instruments with the independent Investment Advisory Body and we note that the rationale behind their use is to protect against risk on currency conversions when payments are due to be made in a foreign currency. These financial instruments contain both "hedge" and "bet" aspects which increase the financial risk to the Fund during a planned currency purchase; and disclosure of the nature and outcome of the participating forwards is presented in Note 25 to the financial statements.

**Investigation of anonymous allegations**

44 On 22 September 2005 the Director of the Funds received the first of two anonymous communications alleging corruption and bribery involving a senior member of the Secretariat, who had previously been employed by a law firm providing services to the Funds and who had continuing family connections to that law firm. A second communication received on 3 October 2005 provided information concerning a payment made to the employee in 1996 by the law firm concerned.

45 At the request of the Director we investigated the allegations that a senior member of the Secretariat – previously a member of the law firm, with which he had family connections and with which the IOPC Funds continued to do business – had received payment in return for placing Funds business with the firm. We carried out a thorough audit examination to test transactions between the Funds and the law firm, to ensure that payments by the Fund had been proper, authorised and subject to review by Secretariat staff other than the subject of the allegations; to review documentation and statements by key parties to assess whether the allegations could be substantiated; and to interview relevant Secretariat staff and a senior member of the law firm concerned in the allegations.

46 The alleged improper payment made by the law firm to the senior member of the Secretariat's staff was identified as a payment in respect of work undertaken by the individual for the law firm before he joined the staff of the Secretariat in 1996, constituting a payment to reflect the individual's performance while he worked for the firm. We identified no evidence to substantiate the allegations of impropriety, nor any evidence of irregularity in transactions between the Funds and the law firm.

47 We confirmed that there were adequate internal controls in place to prevent any payment being made by one individual without review by at least one other member of staff. We found that payments made by the Funds to the law firm had been reviewed by at least three members of the Secretariat. The payments made were in accordance with the Funds' payment procedures.

48 The engagement by the Secretariat of a former employee of an entity which continues to have a business relationship with the Funds may give rise to potential conflicts of interest. Where any

members of the Funds or the Secretariat have related party relationships with entities which have business dealings with the Funds, there is potential for conflicts of interest. The Director informed us that, in view of the family and business relationship between the Secretariat staff member and the law firm, he had requested the law firm not to assign any Funds work to the staff member's relative, although this request had not been confirmed in any written exchange or terms of engagement. We have recommended that in future any such arrangements should be the subject of formal written contractual terms.

49 The Director of the Funds acted properly in bringing the allegations immediately to our attention and to the notice of the respective chairmen of the Assembly and the Funds' Audit Body. Following recommendations that we made in our audit report for 2004, the Funds have now introduced a register of interests and a register of gifts and hospitality; and have implemented a code of conduct. This should enable the Secretariat to better assess and manage the Funds' exposure to potential conflict of interest situations.

***Recommendation 3: We recommend that, where potential conflicts of interest or related party relationships are identified, action taken in relation to the risks arising should be reflected in written agreements and disclosures as appropriate.***

**Procurement procedures**

50 The Funds need to obtain goods and the services of lawyers and experts, for example, at the right quality, timing and value. Procedures and practice in procurement can affect both costs and the achievement of key objectives and outputs. We carried out a review of procurement procedures and practice in the three main areas of procurement at the Funds: claims, office administration and information technology (IT), using a questionnaire as the basis for discussions with Secretariat staff responsible for procurement in those areas.

51 Internal Regulation 13 provides delegated authority to senior management to procure items up to a value of £50,000 and the process is further controlled by Administrative Instructions No.3 and No.5 which deal with the payment and commitment of funds respectively. No further procurement procedures had been specifically documented in the areas we reviewed.

52 We noted that procurement arrangements in legal, administration and IT were quite different from each other. Staff responsible for procurement were experienced in their areas of work and had been with the Funds for a sufficient amount of time to understand the needs of the business. The procurement of legal and technical services for the claims department utilised a selection process which reflected the nature or geographical location of the services required, and which could lead to selection based on prior experience, reputation or the sole source of the required service in a particular country. We noted that unsatisfactory service by contractors could be easily detected because of the constant review of work by the claims legal teams. The IT section uses service level agreements for IT contracts and warranties for hardware and software; and office administration suppliers are assessed on their quality and speed of delivery. Price control is exercised through short IT contracts; competition in the supply of office administration requirements; and predetermined hourly rates for professional services.

53 We tested expenditure items as part of our review and identified examples of key service suppliers (such as lawyers and other experts) with no letter of instruction; procurement from suppliers without written contracts; and a lack of documentation to confirm the rationale for the selection of technical and professional services.

*Recommendation 4: We recommend that the basis of selection of all service suppliers should be supported by documentation to support management or audit review, and ensure good procurement practice and compliance with the Funds' administrative instructions.*

*Recommendation 5: To ensure business continuity and consistency in procurement practice, we recommend the documentation of purchasing procedures as appropriate for office administration and IT.*

**Risk management**

54 In our 2004 report, we noted that the Fund had continued to make progress in identifying its financial risks, but we encouraged greater impetus to complete the process; ensuring that a full and systematic risk management assessment would be in place prior to the arrival of the new Director. This process continued throughout 2005 using an external consultancy with progress being reviewed by the Audit Body.

55 The Fund's risk environment is a dynamic one and systematic arrangements need to be in place as soon as possible to support changes in this environment.

*Recommendation 6: We recommend that the Secretariat prioritise the completed risk register to identify the key risks facing the organisation. These risks, where there is high likelihood of occurrence, and where high impact would ensue, should be regularly monitored by the Secretariat, to ensure that appropriate controls are in place to mitigate and manage the risks to an acceptable level.*

## PROGRESS ON 2004 AUDIT RECOMMENDATIONS

56 As part of our responsibilities as external auditors, we routinely report to the Assembly on management's implementation of prior year audit recommendations. This serves to provide assurance to the Assembly that appropriate action is taken in response to audit recommendations. The External Auditor's Report for 2004 had emphasised the importance of improved governance arrangements, transparency and risk management.

**Statement of Internal Control (SIC)**

57 The 2004 audit report recommended that the Director consider the merits of including a Statement of Internal Control to enhance the assurance and accountability framework of the Fund. The external auditor reports where the information contained in the Statement is inconsistent with the auditors' knowledge of the business. As part of our audit for 2005 we provided additional guidance on the development of such a statement by the Director and this has now been included in the 2005 financial statements. The IOPC Funds are the first international organisation audited by the NAO to incorporate such a statement, which represents a very commendable improvement in the financial reporting arrangements.

**Transparency and staff conduct**

58 Our report for 2004 also recommended the introduction of registers of interest and the receipt of gifts to improve transparency in governance. The Secretariat completed the establishment of appropriate arrangements in 2006; and issued a draft code of conduct in June 2006. This demonstrates the Funds' commitment to follow best practice in governance.

59 We recommended that the Secretariat establish a procedure to provide a clear reporting line for staff to make disclosures of suspected misconduct, and ensure that it provides adequate protection to staff who make genuine disclosures. We noted that the Funds' whistle-blowing

policy was issued towards the end of 2005 and we commend the Secretariat for its timely response to this recommendation.

## ACKNOWLEDGEMENT

60 We are grateful for the continued assistance and co-operation provided by the Director and all staff of the 1992 Fund during our audit.

**Sir John Bourn**
Comptroller and Auditor General, United Kingdom
External Auditor
June 2006

## ANNEX I: SCOPE AND AUDIT APPROACH

### Audit scope and objectives

Our audit examined the financial statements of the International Oil Pollution Compensation Fund 1992 (1992 Fund) for the financial period ended 31 December 2005 in accordance with Financial Regulation 13. The main purpose of the audit was to enable us to form an opinion on whether the financial statements fairly presented the Fund's financial position, its surplus, funds and cash flows for the year ended 31 December 2005; and whether they had been properly prepared in accordance with the Financial Regulations.

### Audit standards

Our audit was conducted in accordance with International Standards on Auditing as issued by the International Auditing and Assurance Standards Board. These standards required us to plan and carry out the audit so as to obtain reasonable assurance that the financial statements are free from material misstatement. Management were responsible for preparing these financial statements and the External Auditor is responsible for expressing an opinion on them, based on evidence obtained during the audit.

### Audit approach

Our audit included a general review of the accounting systems and such tests of the accounting records and internal control procedures as we considered necessary in the circumstances. The audit procedures are designed primarily for the purpose of forming an opinion on the Fund's financial statements. Consequently our work did not involve detailed review of all aspects of financial and budgetary systems from a management perspective, and the results should not be regarded as a comprehensive statement of all weaknesses that exist or all improvements that might be made

Our audit also included focused work in which all material areas of the financial statements were subject to direct substantive testing. A final examination was carried out to ensure that the financial statements accurately reflected the Fund's accounting records; that the transactions conformed to the relevant financial regulations and governing body directives; and that the audited accounts were fairly presented.

# ANNEX X

## FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 FOR THE YEAR ENDED 31 DECEMBER 2005 OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Fund 1992

I have audited the accompanying financial statements, comprising Statements I to VII, Schedules I to III and the supporting Notes of the International Oil Pollution Compensation Fund 1992 for the financial period ended 31 December 2005. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2005 and the results of operations and cash flows for the period then ended in accordance with the 1992 Fund's stated accounting policies set out in Note 1 of the financial statements, which were applied on a basis consistent with that of the preceding financial period.

Further, in my opinion, the transactions of the 1992 Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

In accordance with Financial Regulation 13, I have also issued a long-form Report on my audit of the Fund's financial statements.

**Sir John Bourn**
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2006

# ANNEX XI

## GENERAL FUND
## 1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | 2005 | | 2004 | |
|---|---|---|---|---|
| | £ | £ | £ | £ |
| **INCOME** | | | | |
| **Contributions** | | | | |
| Contributions | 5 366 024 | | 6 906 194 | |
| Adjustment to prior years' assessment | 114 944 | | 394 159 | |
| Less contributions waived | (2 965) | | - | |
| **Total contributions** | | **5 478 003** | | **7 300 353** |
| **Miscellaneous** | | | | |
| Management fee | 450 000 | | 325 000 | |
| Sundry income | 9 120 | | 22 480 | |
| Transfer from *Nakhodka* MCF | 117 834 | | - | |
| Interest on loan to HNS Fund | 3 083 | | 1 754 | |
| Interest on loan to Supplementary Fund | 2 203 | | 1 869 | |
| Interest on loan to *Prestige* MCF | - | | 21 705 | |
| Interest on overdue contributions | 5 956 | | 11 245 | |
| Less interest on overdue contributions waived | (569) | | - | |
| Interest on investments | 1 365 824 | | 1 021 033 | |
| **Total miscellaneous** | | **1 953 451** | | **1 405 086** |
| **TOTAL INCOME** | | **7 431 454** | | **8 705 439** |
| **EXPENDITURE** | | | | |
| **Secretariat expenses** | | | | |
| Obligations incurred | | 2 847 199 | | 2 609 613 |
| **Claims** | | | | |
| Compensation | | 304 827 | | 1 930 001 |
| **Claims-related expenses** | | | | |
| Fees | 266 067 | | 353 070 | |
| Travel | 5 033 | | 13 858 | |
| Miscellaneous | 150 | | 300 | |
| **Total claims-related expenses** | | **271 250** | | **367 228** |
| **TOTAL EXPENDITURE** | | **3 423 276** | | **4 906 842** |
| (Shortfall)/excess of income over expenditure | | 4 008 178 | | 3 798 597 |
| Exchange adjustment | | 11 | | 14 |
| Balance b/f: 1 January | | 25 364 213 | | 21 565 602 |
| **Balance as at 31 December** | | **29 372 402** | | **25 364 213** |

# ANNEX XII

## MAJOR CLAIMS FUNDS
## 1992 FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | *Nakhodka* | | *Erika* | | *Prestige* | |
|---|---|---|---|---|---|---|
| | **2005** £ | **2004** £ | **2005** £ | **2004** £ | **2005** £ | **2004** £ |
| **INCOME** | | | | | | |
| **Contributions** | | | | | | |
| Contributions (second levy) | - | - | - | - | 32 894 926 | 74 356 593 |
| Reimbursement to contributors | (599 995) | (37 700 028) | - | - | - | - |
| Adjustment to prior years' assessment | - | - | - | - | 362 855 | - |
| Less contributions waived | - | - | - | - | (50 456) | - |
| **Total contributions** | **(599 995)** | **(37 700 028)** | **-** | **-** | **33 207 325** | **74 356 593** |
| **Miscellaneous** | | | | | | |
| Sundry income | - | - | 9 531 | 51 | - | - |
| Interest on loan to *Prestige* MCF | - | 231 744 | - | - | - | - |
| Interest on overdue contributions | - | 7 351 | 3 777 | 1 274 | 81 182 | 80 635 |
| Less interest on overdue contributions waived | - | - | - | - | (4 147) | - |
| Interest on investments | 3 809 | 54 614 | 2 650 429 | 2 529 820 | 2 250 699 | 931 731 |
| **Total miscellaneous** | **3 809** | **293 709** | **2 663 737** | **2 531 145** | **2 327 734** | **1 012 366** |
| **TOTAL INCOME** | **(596 186)** | **(37 406 319)** | **2 663 737** | **2 531 145** | **35 535 059** | **75 368 959** |
| **EXPENDITURE** | | | | | | |
| Compensation | - | - | 11 718 025 | 7 502 681 | 621 316 | 123 033 |
| Fees | - | - | 1 785 899 | 2 004 166 | 2 617 861 | 2 325 594 |
| Interest on loan for General Fund | - | - | - | - | - | 21 705 |
| Interest on loan for *Nakhodka* MCF | - | - | - | - | - | 231 744 |
| Travel | - | - | 1 954 | 3 303 | 26 924 | 28 908 |
| Miscellaneous | - | - | 551 | 1 278 | 4 633 | 6 453 |
| **TOTAL EXPENDITURE** | **-** | **-** | **13 506 429** | **9 511 428** | **3 270 734** | **2 737 437** |
| (Shortfall)/Excess of income over expenditure | (596 186) | (37 406 319) | (10 842 692) | (6 980 283) | 32 264 325 | 72 631 522 |
| Exchange adjustment | - | - | (277 446) | 260 148 | (12 922) | 254 580 |
| Balance b/f: 1 January | 714 020 | 38 120 339 | 60 779 881 | 67 500 016 | 32 879 058 | (40 007 044) |
| Transfer to General Fund | (117 834) | - | - | - | - | - |
| **Balance as at 31 December** | **-** | **714 020** | **49 659 743** | **60 779 881** | **65 130 461** | **32 879 058** |

# ANNEX XIII

## BALANCE SHEET OF THE 1992 FUND AS AT 31 DECEMBER 2005

| | General Fund<br>£ | *Erika*<br>£ |
|---|---|---|
| **ASSETS** | | |
| Cash at banks and in hand | 32 493 151 | 49 617 005 |
| Contributions outstanding | 62 529 | - |
| Interest on overdue contributions outstanding | 8 110 | 4 160 |
| Due from HNS Fund | 82 398 | - |
| Due from Supplementary Fund | 177 742 | - |
| Due from 1971 Fund | 8 347 | - |
| Tax recoverable | 80 375 | 38 575 |
| Miscellaneous receivable | 28 460 | 3 |
| **TOTAL ASSETS** | **32 941 112** | **49 659 743** |
| **LIABILITIES** | | |
| Staff Provident Fund | 2 382 373 | - |
| Accounts payable | 6 965 | - |
| Unliquidated obligations | 143 327 | - |
| Prepaid contributions | - | - |
| Contributors' account | 1 036 045 | - |
| **TOTAL LIABILITIES** | **3 568 710** | **-** |
| **FUNDS' BALANCES** | | |
| Working capital | 22 000 000 | - |
| Surplus / (Deficit) | 7 372 402 | 49 659 743 |
| **GENERAL FUNDS & MAJOR CLAIMS FUNDS (MCFs) BALANCES** | **29 372 402** | **49 659 743** |
| **TOTAL LIABILITIES, GENERAL FUND & MCFs BALANCES** | **32 941 112** | **49 659 743** |

| *Prestige* | 2005 Total | 2004 Total |
|---|---|---|
| | | |
| 64 195 420 | 146 305 576 | 121 617 345 |
| 313 953 | 376 482 | 656 728 |
| 75 465 | 87 735 | 63 775 |
| - | 82 398 | 54 185 |
| - | 177 742 | 45 539 |
| - | 8 347 | 326 306 |
| 545 367 | 664 317 | 496 516 |
| 256 | 28 719 | 24 373 |
| **65 130 461** | **147 731 316** | **123 284 767** |
| | | |
| - | 2 382 373 | 1 955 615 |
| - | 6 965 | 20 882 |
| - | 143 327 | 91 394 |
| - | - | 402 421 |
| - | 1 036 045 | 1 077 283 |
| **-** | **3 568 710** | **3 547 595** |
| | | |
| - | 22 000 000 | 22 000 000 |
| 65 130 461 | 122 162 606 | 97 737 172 |
| **65 130 461** | **144 162 606** | **119 737 172** |
| **65 130 461** | **147 731 316** | **123 284 767** |

# ANNEX XIV

## CASH FLOW STATEMENT OF THE 1992 FUND FOR THE FINANCIAL PERIOD 1 JANUARY - 31 DECEMBER 2005

| | 2005 | | 2004 | |
|---|---|---|---|---|
| | £ | £ | £ | £ |
| Cash as at 1 January | | 121 617 345 | | 88 672 665 |
| **OPERATING ACTIVITIES** | | | | |
| Operating Surplus/(Deficit) | 18 154 673 | | 28 021 061 | |
| (Increase)/Decrease in Debtors | 241 682 | | (1 040 653) | |
| Increase/(Decrease) in Creditors | (153 570) | | 1 271 166 | |
| Net cash flow from operating activities | | 18 242 785 | | 28 251 574 |
| **RETURNS ON INVESTMENTS** | | | | |
| Interest on investments | 6 445 446 | | 4 693 106 | |
| Net cash inflow from returns on investments | | 6 445 446 | | 4 693 106 |
| **Cash as at 31 December** | | **146 305 576** | | **121 617 345** |

# ANNEX XV

## FINANCIAL STATEMENTS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND FOR THE PERIOD 3 MARCH TO 31 DECEMBER 2005: OPINION OF THE EXTERNAL AUDITOR

To: the Assembly of the International Oil Pollution Compensation Supplementary Fund

I have audited the accompanying financial statements, comprising Statements I to III and the supporting Notes of the International Oil Pollution Compensation Supplementary Fund for the financial period ended 31 December 2005. These financial statements are the responsibility of the Director. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with the International Standards on Auditing (ISAs) as issued by the International Auditing and Assurance Standards Board (IAASB). Those standards require that I plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, and as considered by the auditor to be necessary in the circumstances, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by the Director, as well as evaluating the overall financial statement presentation. I believe that my audit provides a reasonable basis for the audit opinion.

In my opinion, these financial statements present fairly, in all material respects, the financial position as at 31 December 2005 and the results of operations for the period then ended in accordance with the Supplementary Fund's stated accounting policies set out in Note 1 of the financial statements.

Further, in my opinion, the transactions of the Supplementary Fund, which I have tested as part of my audit have in all significant respects been in accordance with the Financial Regulations and legislative authority.

I have no observations to make on these financial statements.

**Sir John Bourn**
Comptroller and Auditor General, United Kingdom
External Auditor
London, 30 June 2006

# ANNEX XVI

## GENERAL FUND
## SUPPLEMENTARY FUND: INCOME AND EXPENDITURE ACCOUNT FOR THE FINANCIAL PERIOD 3 MARCH - 31 DECEMBER 2005

| | 2005<br>£ |
|---|---|
| **INCOME** | |
| Total income | - |
| **EXPENDITURE** | |
| **Secretariat expenses** | |
| Obligations incurred | 177 742 |
| **Balance as at 31 December** | **(177 742)** |

## BALANCE SHEET OF THE SUPPLEMENTARY FUND AS AT 31 DECEMBER 2005

| | 2005<br>£ |
|---|---|
| **ASSETS** | |
| Total assets | - |
| **LIABILITIES** | |
| Due to 1992 Fund | 177 742 |
| **Total liabilities** | **177 742** |
| General Fund balance | (177 742) |
| **Total liabilities and General Fund balance** | **NIL** |

# ANNEX XVII

## 1971 FUND: KEY FINANCIAL FIGURES FOR 2006
**(2006 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)**

### INCOME

| | 2006 £ |
|---|---|
| 2005 Annual Contributions due in 2006 | - |
| Other income: | |
| Interest on investments | 430 000 |
| **TOTAL INCOME** | **430 000** |

### ADMINISTRATIVE COSTS

| | 2006 £ | 2005 £ |
|---|---|---|
| **Only 1971 Fund** | | |
| Management fee payable to the 1992 Fund | 275 000 | 325 000 |
| External Audit | 10 000 | 12 500 |
| **Winding up** | | |
| Budget | 250 000 | 250 000 |
| Expenditure | 5 640 | - |

### CLAIMS EXPENDITURE

| Incident | 2006 £ Compensation | 2006 £ Claims related expenditure | 2006 £ Total |
|---|---|---|---|
| *Pontoon 300* | 224 000 | 52 000 | 276 000 |
| *Iliad* | - | 104 000 | 104 000 |
| *Nissos Amorgos* | - | 20 000 | 20 000 |
| Other incidents | - | 221 000 | 221 000 |
| **TOTAL CLAIMS EXPENDITURE** | **224 000** | **397 000** | **621 000** |

# ANNEX XVIII

## 1992 FUND: KEY FINANCIAL FIGURES FOR 2006

**(2006 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)**

### INCOME

| | 2006<br>£ |
|---|---|
| 2005 Annual Contributions due in 2006 | - |
| Other income: | |
| Interest on investments | 4 640 000 |
| Management fee payable by 1971 Fund | 275 000 |
| Management fee payable by Supplementary Fund | 70 000 |
| STOPIA 2006[21] | 1 346 600 |
| **TOTAL INCOME** | **6 331 600** |

### ADMINISTRATIVE COSTS

| | 2006<br>£ | 2005<br>£ |
|---|---|---|
| **Joint Secretariat** | | |
| Budget (including External Auditor's fees) | 3 541 400 | 3 372 600 |
| Expenditure (excluding External Auditor's fees for respective IOPC Funds) | 3 250 000 | 2 745 000 |
| External Auditor's fees in respect of 1992 Fund | 47 000 | 42 500 |

### CLAIMS EXPENDITURE

| Incident | 2006<br>£<br>Compensation | 2006<br>£<br>Claims related expenditure | 2006<br>£<br>Total |
|---|---|---|---|
| *Prestige* | 40 538 000 | 2 480 000 | 43 018 000 |
| Less interim reimbursement from P&I Club for joint costs | - | (1 000 000) | (1 000 000) |
| **Sub total** | | | **42 018 000** |
| *Erika* | 7 922 000 | 1 483 000 | 9 405 000 |
| *Solar 1*[1] | 1 975 000 | 30 600 | 2 005 600 |
| *N°7 Kwang Min* | 1 165 000 | 178 000 | 1 343 000 |
| *Dolly* | 1 029 000 | 12 000 | 1 041 000 |
| Other incidents | - | 44 000 | 44 000 |
| **TOTAL CLAIMS EXPENDITURE** | **52 629 000** | **3 227 600** | **55 856 600** |



[21] *Under the STOPIA 2006 agreement the 1992 Fund is entitled to indemnification by the shipowner involved of the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and the total amount of the admissible claims or 20 million SDR, whichever is the less.*

# ANNEX XIX

## SUPPLEMENTARY FUND: KEY FINANCIAL FIGURES FOR 2006

**(2006 INCOME/EXPENDITURE FIGURES ROUNDED AND SUBJECT TO AUDIT BY THE EXTERNAL AUDITOR)**

### INCOME

| | 2006<br>£ |
|---|---|
| 2005 Annual Contributions due in 2006 | - |

### ADMINISTRATIVE COSTS

| | 2006<br>£ | Budget<br>£ |
|---|---|---|
| Loans from 1992 Fund brought forward to cover expenditure prior to receipt of contributions (excluding interest on loans) | 173 000 | - |
| External Auditor's fees | 3 500 | 15 000 |
| Management fee payable to 1992 Fund | 70 000 | 70 000 |
| **Total loans from 1992 Fund (accruing interest)** | **246 500** | |

# ANNEX XX

## 1992 FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2005 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE 1992 FUND ON 31 DECEMBER 2006

*As reported by 31 December 2006*

| Member State | Contributing Oil (Tonnes) | % of Total |
|---|---|---|
| Japan | 257 145 881 | 18.27% |
| Italy | 138 117 337 | 9.81% |
| Republic of Korea | 117 111 048 | 8.32% |
| India | 105 919 600 | 7.52% |
| Netherlands | 105 431 472 | 7.49% |
| France | 100 944 035 | 7.17% |
| Canada | 77 815 319 | 5.53% |
| Singapore | 73 480 922 | 5.22% |
| Spain | 63 497 553 | 4.51% |
| United Kingdom | 53 827 398 | 3.82% |
| Germany | 41 322 593 | 2.94% |
| Australia | 31 405 339 | 2.23% |
| Turkey | 24 961 258 | 1.77% |
| Sweden | 21 886 084 | 1.55% |
| Greece | 20 936 911 | 1.49% |
| Norway | 18 039 448 | 1.28% |
| Portugal | 15 893 725 | 1.13% |
| Malaysia | 13 920 515 | 0.99% |
| Israel | 12 479 403 | 0.89% |
| Bahamas | 12 220 103 | 0.87% |
| Philippines | 11 525 984 | 0.82% |
| Finland | 11 445 777 | 0.81% |
| Panama | 7 330 968 | 0.52% |
| Morocco | 6 907 300 | 0.49% |
| Belgium | 6 455 511 | 0.46% |
| Bulgaria | 6 237 981 | 0.44% |
| China (Hong Kong Special Administrative Region) | 6 158 769 | 0.44% |
| Denmark | 5 821 215 | 0.41% |
| Trinidad and Tobago | 4 926 905 | 0.35% |
| New Zealand | 4 612 641 | 0.33% |
| Ireland | 4 353 080 | 0.31% |
| Croatia | 4 009 546 | 0.28% |
| Tunisia | 3 428 380 | 0.24% |
| Jamaica | 2 438 696 | 0.17% |
| Malta | 2 282 513 | 0.16% |
| Sri Lanka | 2 279 169 | 0.16% |
| Uruguay | 2 036 812 | 0.14% |
| Ghana | 2 027 419 | 0.14% |
| Angola | 1 817 311 | 0.13% |
| Cameroon | 1 780 257 | 0.13% |
| Cyprus | 1 144 575 | 0.08% |
| Algeria | 716 157 | 0.05% |
| Nigeria | 519 348 | 0.04% |
| Poland | 481 379 | 0.03% |
| Colombia | 420 633 | 0.03% |
| Barbados | 222 996 | 0.02% |
| | **1 407 737 266** | **100.00%** |

### Notes

*Nil return from Antigua and Barbuda, Brunei, Djibouti, Estonia, Fiji, Gabon, Georgia, Iceland, Latvia, Liberia, Lithuania, Marshall Islands, Monaco, Mozambique, Qatar, Samoa, Seychelles, Sierra Leone, Slovenia, United Arab Emirates and Vanuatu.*

*No report from Albania, Argentina, Bahrain, Belize, Cambodia, Cape Verde, Comoros, Congo, Dominica, Dominican Republic, Grenada, Guinea, Kenya, Luxembourg, Madagascar, Maldives, Mauritius, Mexico, Namibia, Oman, Papua New Guinea, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, South Africa, Switzerland, Tonga, Tuvalu, United Republic of Tanzania and Venezuela.*

# ANNEX XXI

## SUPPLEMENTARY FUND: CONTRIBUTING OIL RECEIVED IN THE CALENDAR YEAR 2005 IN THE TERRITORIES OF STATES WHICH WERE MEMBERS OF THE SUPPLEMENTARY FUND ON 31 DECEMBER 2006

***As reported by 31 December 2006***

| Member State | Contributing Oil (Tonnes) | % of Total |
|---|---|---|
| Japan | 257 145 881 | 29.4% |
| Italy | 138 117 337 | 15.8% |
| Netherlands | 105 431 472 | 12.0% |
| France | 100 944 035 | 11.5% |
| Germany | 68 035 841[22] | 7.8% |
| Spain | 63 497 553 | 7.3% |
| UK | 53 827 398 | 6.2% |
| Sweden | 21 886 084 | 2.5% |
| Norway | 18 039 448 | 2.1% |
| Portugal | 15 893 725 | 1.8% |
| Finland | 11 445 777 | 1.3% |
| Belgium | 6 455 511 | 0.7% |
| Denmark | 5 821 215 | 0.7% |
| Ireland | 4 353 080 | 0.5% |
| Croatia | 4 009 546 | 0.5% |
| Barbados[23] | 222 996 | 0.0% |
| Lithuania[23] | 0 | 0.0% |
| Slovenia[23] | 0 | 0.0% |
| Latvia[23] | 0 | 0.0% |
| | **875 126 899** | **100.00%** |



[22] *Including 26 713 248 tonnes received via Italy.*

[23] *Deemed to have received a total of 1 million tonnes for the purposes of contributions to the Supplementary Fund.*

# ANNEX XXII

## 1971 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2006)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 1 | *Irving Whale* | 7.9.70 | Gulf of St Lawrence, Canada | Canada | 2 261 | Unknown |
| 2 | *Antonio Gramsci* | 27.2.79 | Ventspils, USSR | USSR | 27 694 | Rbls 2 431 584 |
| 3 | *Miya Maru N°8* | 22.3.79 | Bisan Seto, Japan | Japan | 997 | ¥37 710 340 |
| 4 | *Tarpenbek* | 21.6.79 | Selsey Bill, United Kingdom | Federal Republic of Germany | 999 | £64 356 |
| 5 | *Mebaruzaki Maru N°5* | 8.12.79 | Mebaru, Japan | Japan | 19 | ¥845 480 |
| 6 | *Showa Maru* | 9.1.80 | Naruto Strait, Japan | Japan | 199 | ¥8 123 140 |
| 7 | *Unsei Maru* | 9.1.80 | Akune, Japan | Japan | 99 | ¥3 143 180 |
| 8 | *Tanio* | 7.3.80 | Brittany, France | Madagascar | 18 048 | FFr11 833 718 |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Sinking | Unknown | | | *Irving Whale* refloated in 1996. Canadian Court dismissed action against 1971 Fund as Fund could not be held liable for events which occurred prior to entry into force of 1971 Fund Convention for Canada. |
| Grounding | 5 500 | Clean-up | SKr95 707 157 | |
| Collision | 540 | Clean-up<br>Fishery-related<br>Indemnification | ¥108 589 104<br>¥31 521 478<br>¥9 427 585<br>**¥149 538 167** | ¥5 438 909 recovered by way of recourse. |
| Collision | Unknown | Clean-up | £363 550 | |
| Sinking | 10 | Clean-up<br>Fishery-related<br>Indemnification | ¥7 477 481<br>¥2 710 854<br>¥211 370<br>**¥10 399 705** | |
| Collision | 100 | Clean-up<br>Fishery-related<br>Indemnification | ¥10 408 369<br>¥92 696 505<br>¥2 030 785<br>**¥105 135 659** | ¥9 893 496 recovered by way of recourse. |
| Collision | <140 | | | Because of the distribution of liability between the two colliding ships, 1971 Fund not called upon to pay any compensation. |
| Breaking | 13 500 | Clean-up<br>Tourism-related<br>Fishery-related<br>Other loss of income | FFr219 164 465<br>FFr2 429 338<br>FFr52 024<br>FFr494 816<br>**FFr222 140 643** | Total payment equalled limit of compensation available under 1971 Fund Convention; payments by 1971 Fund represented 63.85% of accepted amounts. US$17 480 028 recovered by way of recourse. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 9 | *Furenas* | 3.6.80 | Oresund, Sweden | Sweden | 999 | SKr612 443 |
| 10 | *Hosei Maru* | 21.8.80 | Miyagi, Japan | Japan | 983 | ¥35 765 920 |
| 11 | *Jose Marti* | 7.1.81 | Dalarö, Sweden | USSR | 27 706 | SKr23 844 593 |
| 12 | *Suma Maru N°11* | 21.11.81 | Karatsu, Japan | Japan | 199 | ¥7 396 340 |
| 13 | *Globe Asimi* | 22.11.81 | Klaipeda, USSR | Gibraltar | 12 404 | Rbls 1 350 324 |
| 14 | *Ondina* | 3.3.82 | Hamburg, Federal Republic of Germany | Netherlands | 31 030 | DM10 080 383 |
| 15 | *Shiota Maru N°2* | 31.3.82 | Takashima island, Japan | Japan | 161 | ¥6 304 300 |
| 16 | *Fukutoko Maru N°8* | 3.4.82 | Tachibana Bay, Japan | Japan | 499 | ¥20 844 440 |
| 17 | *Kifuku Maru N°35* | 1.12.82 | Ishinomaki, Japan | Japan | 107 | ¥4 271 560 |
| 18 | *Shinkai Maru N°3* | 21.6.83 | Ichikawa, Japan | Japan | 48 | ¥1 880 940 |
| 19 | *Eiko Maru N°1* | 13.8.83 | Karakuwazaki, Japan | Japan | 999 | ¥39 445 920 |
| 20 | *Koei Maru N°3* | 22.12.83 | Nagoya, Japan | Japan | 82 | ¥3 091 660 |
| 21 | *Tsunehisa Maru N°8* | 26.8.84 | Osaka, Japan | Japan | 38 | ¥964 800 |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Collision | 200 | Clean-up<br>Clean-up<br>Indemnification | SKr3 187 687<br>DKr418 589<br>SKr153 111 | SKr449 961 recovered by way of recourse. |
| Collision | 270 | Clean-up<br>Fishery-related<br>Indemnification | ¥163 051 598<br>¥50 271 267<br>¥8 941 480<br>**¥222 264 345** | ¥18 221 905 recovered by way of recourse. |
| Grounding | 1 000 | | | Total damage less than shipowner's liability (clean-up SKr20 361 000 claimed). Shipowner's defence that he should be exonerated from liability rejected in final court judgement. |
| Grounding | 10 | Clean-up<br>Indemnification | ¥6 426 857<br>¥1 849 085<br>**¥8 275 942** | |
| Grounding | >16 000 | Indemnification | US$467 953 | No damage in 1971 Fund Member State. |
| Discharge | 200-300 | Clean-up | DM11 345 174 | |
| Grounding | 20 | Clean-up<br>Fishery-related<br>Indemnification | ¥46 524 524<br>¥24 571 190<br>¥1 576 075<br>**¥72 671 789** | |
| Collision | 85 | Clean-up<br>Fishery-related<br>Indemnification | ¥200 476 274<br>¥163 255 481<br>¥5 211 110<br>**¥368 942 865** | |
| Sinking | 33 | Indemnification | ¥598 181 | Total damage less than shipowner's liability. |
| Discharge | 3.5 | Clean-up<br>Indemnification | ¥1 005 160<br>¥470 235<br>**¥1 475 395** | |
| Collision | 357 | Clean-up<br>Fishery-related<br>Indemnification | ¥23 193 525<br>¥1 541 584<br>¥9 861 480<br>**¥34 596 589** | ¥14 843 746 recovered by way of recourse. |
| Collision | 49 | Clean-up<br>Fishery-related<br>Indemnification | ¥18 010 269<br>¥8 971 979<br>¥772 915<br>**¥27 755 163** | ¥8 994 083 recovered by way of recourse. |
| Sinking | 30 | Clean-up<br>Indemnification | ¥16 610 200<br>¥241 200<br>**¥16 851 400** | |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 22 | *Koho Maru N°3* | 5.11.84 | Hiroshima, Japan | Japan | 199 | ¥5 385 920 |
| 23 | *Koshun Maru N°1* | 5.3.85 | Tokyo Bay, Japan | Japan | 68 | ¥1 896 320 |
| 24 | *Patmos* | 21.3.85 | Straits of Messina, Italy | Greece | 51 627 | LIt 13 263 703 650 |
| 25 | *Jan* | 2.8.85 | Aalborg, Denmark | Federal Republic of Germany | 1 400 | DKr1 576 170 |
| 26 | *Rose Garden Maru* | 26.12.85 | Umm Al Qaiwain, United Arab Emirates | Panama | 2 621 | US$364 182 (estimate) |
| 27 | *Brady Maria* | 3.1.86 | Elbe Estuary, Federal Republic of Germany | Panama | 996 | DM324 629 |
| 28 | *Take Maru N°6* | 9.1.86 | Sakai-Senboku, Japan | Japan | 83 | ¥3 876 800 |
| 29 | *Oued Gueterini* | 18.12.86 | Algiers, Algeria | Algeria | 1 576 | Din1 175 064 |
| 30 | *Thuntank 5* | 21.12.86 | Gävle, Sweden | Sweden | 2 866 | SKr2 741 746 |
| 31 | *Antonio Gramsci* | 6.2.87 | Borgå, Finland | USSR | 27 706 | Rbls 2 431 854 |
| 32 | *Southern Eagle* | 15.6.87 | Sada Misaki, Japan | Panama | 4 461 | ¥93 874 528 |
| 33 | *El Hani* | 22.7.87 | Indonesia | Libya | 81 412 | £7 900 000 (estimate) |
| 34 | *Akari* | 25.8.87 | Dubai, United Arab Emirates | Panama | 1 345 | £92 800 (estimate) |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Grounding | 20 | Clean-up<br>Fishery-related<br>Indemnification<br>**¥95 458 298** | ¥68 609 674<br>¥25 502 144<br>¥1 346 480 | |
| Collision | 80 | Clean-up<br>Indemnification<br>**¥26 598 669** | ¥26 124 589<br>¥474 080 | ¥8 866 222 recovered by way of recourse. |
| Collision | 700 | | | Total damage agreed out of court or decided by court (LIt11 583 298 650) less than shipowner's liability. |
| Grounding | 300 | Clean-up<br>Indemnification<br>**DKr9 849 704** | DKr9 455 661<br>DKr394 043 | |
| Discharge of oil | Unknown | | | Claim against 1971 Fund (US$44 204) withdrawn. |
| Collision | 200 | Clean-up | DM3 220 511 | DM333 027 recovered by way of recourse. |
| Discharge of oil | 0.1 | Indemnification | ¥104 987 | Total damage less than shipowner's liability. |
| Discharge | 15 | Clean-up<br>Clean-up<br>Clean-up<br>Other loss of income<br>Indemnification | US$1 133<br>FFr708 824<br>Din5 650<br>£126 120<br>Din293 766 | |
| Grounding | 150-200 | Clean-up<br>Fishery-related<br>Indemnification<br>**SKr23 903 069** | SKr23 168 271<br>SKr49 361<br>SKr685 437 | |
| Grounding | 600-700 | Clean-up | FM1 849 924 | USSR clean-up claims (Rbls 1 417 448) not paid by 1971 Fund since USSR not Member of 1971 Fund at time of incident. |
| Collision | 15 | | | Total damage less than shipowner's liability (¥35 346 679 clean-up and ¥51 521 183 fishery-related agreed). |
| Grounding | 3 000 | | | Clean-up claim (US$242 800) not pursued. |
| Fire | 1 000 | Clean-up<br>Clean-up | Dhs 864 293<br>US$187 165 | US$160 000 refunded by shipowner's insurer. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 35 | *Tolmiros* | 11.9.87 | West coast, Sweden | Greece | 48 914 | SKr50 000 000 (estimate) |
| 36 | *Hinode Maru N°1* | 18.12.87 | Yawatahama, Japan | Japan | 19 | ¥608 000 |
| 37 | *Amazzone* | 31.1.88 | Brittany, France | Italy | 18 325 | FFr13 860 369 |
| 38 | *Taiyo Maru N°13* | 12.3.88 | Yokohama, Japan | Japan | 86 | ¥2 476 800 |
| 39 | *Czantoria* | 8.5.88 | St Romuald, Canada | Canada | 81 197 | Unknown |
| 40 | *Kasuga Maru N°1* | 10.12.88 | Kyoga Misaki, Japan | Japan | 480 | ¥17 015 040 |
| 41 | *Nestucca* | 23.12.88 | Vancouver island, Canada | United States of America | 1 612 | Unknown |
| 42 | *Fukkol Maru N°12* | 15.5.89 | Shiogama, Japan | Japan | 94 | ¥2 198 400 |
| 43 | *Tsubame Maru N°58* | 18.5.89 | Shiogama, Japan | Japan | 74 | ¥2 971 520 |
| 44 | *Tsubame Maru N°16* | 15.6.89 | Kushiro, Japan | Japan | 56 | ¥1 613 120 |
| 45 | *Kifuku Maru N°103* | 28.6.89 | Otsuji, Japan | Japan | 59 | ¥1 727 040 |
| 46 | *Nancy Orr Gaucher* | 25.7.89 | Hamilton, Canada | Liberia | 2 829 | Can$473 766 |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Unknown | 200 | | | Clean-up claim (SKr100 639 999) not pursued, since legal action by Swedish Government against shipowner and 1971 Fund withdrawn. |
| Mishandling of cargo | 25 | Clean-up<br>Indemnification | ¥1 847 225<br>¥152 000<br>**¥1 999 225** | |
| Storm damage to tanks | 2 000 | Clean-up<br>Fishery-related | FFr1 141 185<br>FFr145 792<br>**FFr1 286 977** | FFr1 000 000 recovered from shipowner's insurer. |
| Discharge | 6 | Clean-up<br>Indemnification | ¥6 134 885<br>¥619 200<br>**¥6 754 085** | |
| Collision with berth | Unknown | | | 1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$1 787 771) not pursued. |
| Sinking | 1 100 | Clean-up<br>Fishery-related<br>Indemnification | ¥371 865 167<br>¥53 500 000<br>¥4 253 760<br>**¥429 618 927** | |
| Collision | Unknown | | | 1971 Fund Convention not applicable, as incident occurred before entry into force of Convention for Canada. Clean-up claims (Can$10 475) not pursued. |
| Overflow from supply pipe | 0.5 | Clean-up<br>Indemnification | ¥492 635<br>¥549 600<br>**¥1 042 235** | |
| Mishandling of oil transfer | 7 | Other damage to property<br>Indemnification | ¥19 159 905<br>¥742 880<br>**¥19 902 785** | |
| Discharge | Unknown | Other damage to property<br>Indemnification | ¥273 580<br>¥403 280<br>**¥676 860** | |
| Mishandling of cargo | Unknown | Clean-up<br>Indemnification | ¥8 285 960<br>¥431 761<br>**¥8 717 721** | |
| Overflow during discharge | 250 | | | Total damage less than shipowner's liability (clean-up Can$292 110 agreed). |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 47 | *Dainichi Maru N°5* | 28.10.89 | Yaizu, Japan | Japan | 174 | ¥4 199 680 |
| 48 | *Daito Maru N°3* | 5.4.90 | Yokohama, Japan | Japan | 93 | ¥2 495 360 |
| 49 | *Kazuei Maru N°10* | 11.4.90 | Osaka, Japan | Japan | 121 | ¥3 476 160 |
| 50 | *Fuji Maru N°3* | 12.4.90 | Yokohama, Japan | Japan | 199 | ¥5 352 000 |
| 51 | *Volgoneft 263* | 14.5.90 | Karlskrona, Sweden | USSR | 3 566 | SKr3 205 204 |
| 52 | *Hato Maru N°2* | 27.7.90 | Kobe, Japan | Japan | 31 | ¥803 200 |
| 53 | *Bonito* | 12.10.90 | River Thames, United Kingdom | Sweden | 2 866 | £241 000 (estimate) |
| 54 | *Rio Orinoco* | 16.10.90 | Anticosti island, Canada | Cayman Islands | 5 999 | Can$1 182 617 |
| 55 | *Portfield* | 5.11.90 | Pembroke, Wales, United Kingdom | United Kingdom | 481 | £69 141 |
| 56 | *Vistabella* | 7.3.91 | Caribbean | Trinidad and Tobago | 1 090 | FFr2 354 000 (estimate) |
| 57 | *Hokunan Maru N°12* | 5.4.91 | Okushiri island, Japan | Japan | 209 | ¥3 523 520 |
| 58 | *Agip Abruzzo* | 10.4.91 | Livorno, Italy | Italy | 98 544 | LIt 21 800 000 000 (estimate) |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Mishandling of cargo | 0.2 | Fishery-related<br>Clean-up<br>Indemnification | ¥1 792 100<br>¥368 510<br>¥1 049 920<br>**¥3 210 530** | |
| Mishandling of cargo | 3 | Clean-up<br>Indemnification | ¥5 490 570<br>¥623 840<br>**¥6 114 410** | |
| Collision | 30 | Clean-up<br>Fishery-related<br>Indemnification | ¥48 883 038<br>¥560 588<br>¥869 040<br>**¥50 312 666** | ¥45 038 833 recovered by way of recourse. |
| Overflow during supply operation | Unknown | Clean-up<br>Indemnification | ¥96 431<br>¥1 338 000<br>**¥1 434 431** | ¥430 329 recovered by way of recourse. |
| Collision | 800 | Clean-up<br>Fishery-related<br>Indemnification | SKr15 523 813<br>SKr530 239<br>SKr795 276<br>**SKr16 849 328** | |
| Mishandling of cargo | Unknown | Other damage to property<br>Indemnification | ¥1 087 700<br>¥200 800<br>**¥1 288 500** | |
| Mishandling of cargo | 20 | | | Total damage less than shipowner's liability (clean-up £130 000 agreed). |
| Grounding | 185 | Clean-up | Can$12 831 892 | |
| Sinking | 110 | Clean-up<br>Fishery-related<br>Indemnification | £249 630<br>£9 879<br>£17 155<br>**£276 663** | |
| Sinking | Unknown | Clean-up<br>Clean-up | FFr8 237 529<br>£14 250 | |
| Grounding | Unknown | Clean-up<br>Fishery-related<br>Indemnification | ¥2 119 966<br>¥4 024 863<br>¥880 880<br>**¥7 025 709** | |
| Collision | 2 000 | Indemnification | LIt 1 666 031 931 | Total damage less than shipowner's liability. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 59 | *Haven* | 11.4.91 | Genoa, Italy | Cyprus | 109 977 | LIt 23 950 220 000 |
| 60 | *Kaiko Maru N°86* | 12.4.91 | Nomazaki, Japan | Japan | 499 | ¥14 660 480 |
| 61 | *Kumi Maru N°12* | 27.12.91 | Tokyo Bay, Japan | Japan | 113 | ¥3 058 560 |
| 62 | *Fukkol Maru N°12* | 9.6.92 | Ishinomaki, Japan | Japan | 94 | ¥2 198 400 |
| 63 | *Aegean Sea* | 3.12.92 | La Coruña, Spain | Greece | 57 801 | Pts 1 121 219 450 |
| 64 | *Braer* | 5.1.93 | Shetland, United Kingdom | Liberia | 44 989 | £4 883 840 |
| 65 | *Kihnu* | 16.1.93 | Tallinn, Estonia | Estonia | 949 | 113 000 SDR (estimate) |
| 66 | *Sambo N°11* | 12.4.93 | Seoul, Republic of Korea | Republic of Korea | 520 | Won 77 786 224 (estimate) |
| 67 | *Taiko Maru* | 31.5.93 | Shioyazaki, Japan | Japan | 699 | ¥29 205 120 |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Fire and explosion | Unknown | Italian State<br>Two Italian contractors | LIt 70 002 629 093<br>LIt 1 582 341 690<br>**LIt 71 584 970 783** | Agreement on a global settlement of all outstanding claims between the Italian State, the shipowner/ Club and the 1971 Fund was signed in Rome on 4 March 1999. The 1971 Fund's payments are set out in the previous column. The shipowner's insurer paid LIt47 597 370 907 to the Italian State. The shipowner and his insurer paid all accepted claims by other Italian public bodies and private claimants. |
| | | French State<br>Other French public bodies<br>Principality of Monaco | FFr12 580 724<br>FFr10 659 469<br>FFr270 035<br>**FFr23 510 228** | |
| | | Indemnification | £2 500 000 | |
| Collision | 25 | Clean-up<br>Fishery-related<br>Indemnification | ¥53 513 992<br>¥39 553 821<br>¥3 665 120<br>**¥96 732 933** | |
| Collision | 5 | Clean-up<br>Indemnification | ¥1 056 519<br>¥764 640<br>**¥1 821 159** | ¥650 522 recovered by way of recourse. |
| Mishandling of oil supply | Unknown | Other damage to property<br>Indemnification | ¥4 243 997<br>¥549 600<br>**¥4 793 597** | |
| Grounding | 73 500 | Fishery-related<br>Clean-up<br>Preventive measures<br>Tourism<br>Financial costs<br>Amounts awarded by criminal court<br>Previously settled claims<br>Miscellaneous | Pts 8 696 000 000<br>Pts 1 729 240 000<br>Pts 708 033 000<br>Pts 13 810 000<br>Pts 371 680 000<br>Pts 893 880 000<br>Pts 1 263 150 000<br>Pts 252 990 000<br>**Pts 13 928 783 000** | Shipowner/insurer paid Pts 840 000 000. Pursuant to agreement between the Spanish State, the shipowner/insurer and the 1971 Fund, the Fund paid the Spanish State Pts 6 386 921 613. The Fund also paid Pts 1 263 150 000 to claimants that had settled their claims at an early stage and were not included in the above agreement. |
| | | Indemnification | Pts 278 197 307 | |
| Grounding | 84 000 | Clean-up<br>Fishery-related<br>Tourism-related<br>Farming-related<br>Other damage to property<br>Other loss of income | £593 883<br>£38 538 451<br>£77 375<br>£3 572 392<br>£8 904 047<br>£252 790<br>**£51 938 938** | £6 213 497 paid by shipowner's insurer. The 1971 Fund paid £45 725 441 in compensation. One claim for £1.4 million subject to court proceedings. The shipowner's insurer will pay any amount awarded. |
| Grounding | 140 | Clean-up | FM543 618 | |
| Grounding | 4 | Clean-up<br>Fishery-related | Won 176 866 632<br>Won 42 848 123<br>**Won 219 714 755** | US$22 504 recovered from shipowner's insurer. |
| Collision | 520 | Clean-up<br>Fishery-related<br>Indemnification | ¥756 780 796<br>¥336 404 259<br>¥7 301 280<br>**¥1 100 486 335** | ¥49 104 248 recovered by way of recourse. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 68 | *Ryoyo Maru* | 23.7.93 | Izu peninsula, Japan | Japan | 699 | ¥28 105 920 |
| 69 | *Keumdong N°5* | 27.9.93 | Yeosu, Republic of Korea | Republic of Korea | 481 | Won 77 417 210 |
| 70 | *Iliad* | 9.10.93 | Pylos, Greece | Greece | 33 837 | Drs 1 496 533 000 |
| 71 | *Seki* | 30.3.94 | Fujairah, United Arab Emirates, and Oman | Panama | 153 506 | 14 million SDR |
| 72 | *Daito Maru N°5* | 11.6.94 | Yokohama, Japan | Japan | 116 | ¥3 386 560 |
| 73 | *Toyotaka Maru* | 17.10.94 | Kainan, Japan | Japan | 2 960 | ¥81 823 680 |
| 74 | *Hoyu Maru N°53* | 31.10.94 | Monbetsu, Japan | Japan | 43 | ¥1 089 280 |
| 75 | *Sung Il N°1* | 8.11.94 | Onsan, Republic of Korea | Republic of Korea | 150 | Won 23 000 000 (estimate) |
| 76 | Spill from unknown source | 30.11.94 | Mohammédia, Morocco | - | - | - |
| 77 | *Boyang N°51* | 25.5.95 | Sandbaeg Do, Republic of Korea | Republic of Korea | 149 | 19 817 SDR |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Collision | 500 | Clean-up<br>Indemnification | ¥8 433 001<br>¥7 026 480<br>**¥15 459 481** | ¥10 455 440 recovered by way of recourse. |
| Collision | 1 280 | Clean-up (paid)<br>Fishery-related (paid) | Won 5 602 021 858<br>Won 10 673 130 111<br>**Won 16 275 151 969** | Won 64 560 080 paid by shipowner's insurer. |
| | | Indemnification<br>Fishery-related (claimed) | Won 12 857 130<br>Won 2 756 471 759 | Fishing claims subject of appeal by claimants to the Supreme Court. |
| Grounding | 200 | Clean-up (paid)<br>Fishery-related (claimed)<br>Other loss of income (claimed)<br>Moral damages (claimed) | Drs 356 204 011<br>Drs 1 044 000 000<br>Drs 1 671 000 000<br>Drs 378 000 000<br>**Drs 3 449 204 011** | Drs 356 204 011 paid by shipowner's insurer. |
| Collision | 16 000 | | | Settlement outside the Conventions concluded between the Government of Fujairah and the shipowner. Terms of settlement not known to 1971 Fund. The 1971 Fund will not be called upon to pay any compensation. |
| Overflow during loading operation | 0.5 | Clean-up<br>Indemnification | ¥1 187 304<br>¥846 640<br>**¥2 033 944** | |
| Collision | 560 | Clean-up<br>Fishery-related<br>Other loss of income<br>Indemnification | ¥629 516 429<br>¥50 730 359<br>¥15 490 030<br>¥20 455 920<br>**¥716 192 738** | ¥31 021 717 recovered by way of recourse. |
| Mishandling of oil supply | Unknown | Other damage to property<br>Clean-up<br>Indemnification | ¥3 954 861<br>¥202 854<br>¥272 320<br>**¥4 430 035** | |
| Grounding | 18 | Clean-up<br>Fishery-related | Won 9 401 293<br>Won 28 378 819<br>**Won 37 780 112** | Shipowner lost right to limit his liability because proceedings not commenced within period specified under Korean law. |
| Unknown | Unknown | Clean-up (claimed) | Mor Dhr 2 600 000 | Not established that oil originated from a ship as defined in 1971 Fund Convention. |
| Collision | 160 | | | Clean-up claim (Won 142 million) time-barred as necessary legal action not taken. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 78 | *Dae Woong* | 27.6.95 | Kojung, Republic of Korea | Republic of Korea | 642 | Won 95 000 000 (estimate) |
| 79 | *Sea Prince* | 23.7.95 | Yeosu, Republic of Korea | Cyprus | 144 567 | Won 18 308 275 906 |
| 80 | *Yeo Myung* | 3.8.95 | Yeosu, Republic of Korea | Republic of Korea | 138 | Won 21 465 434 |
| 81 | *Shinryu Maru N°8* | 4.8.95 | Chita, Japan | Japan | 198 | ¥3 967 138 |
| 82 | *Senyo Maru* | 3.9.95 | Ube, Japan | Japan | 895 | ¥20 203 325 |
| 83 | *Yuil N°1* | 21.9.95 | Busan, Republic of Korea | Republic of Korea | 1 591 | Won 351 924 060 |
| 84 | *Honam Sapphire* | 17.11.95 | Yeosu, Republic of Korea | Panama | 142 488 | 14 000 000 SDR |
| 85 | *Toko Maru* | 23.1.96 | Anegasaki, Japan | Japan | 699 | ¥18 769 567 (estimate) |
| 86 | *Sea Empress* | 15.2.96 | Milford Haven, Wales, United Kingdom | Liberia | 77 356 | £7 395 748 |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Grounding | 1 | Clean-up | Won 43 517 127 | |
| Grounding | 5 035 | Clean-up (paid) | Won 20 709 245 359 | Won 18 308 275 906 paid by shipowner's insurer. |
| | | Fishery-related (paid) | Won 19 836 456 445 | |
| | | Tourism-related (paid) | Won 538 000 000 | |
| | | Oil removal (paid) | Won 8 420 123 382 | |
| | | Environmental studies (paid) | Won 723 490 410 | |
| | | | **Won 50 227 315 596** | |
| | | Clean-up (paid) | ¥357 214 | |
| | | Indemnification (paid) | Won 7 410 928 540 | |
| Collision | 40 | Clean-up (paid) | Won 684 000 000 | Won 560 945 437 paid by shipowner's insurer. |
| | | Fishery-related (paid) | Won 600 000 000 | |
| | | Tourism-related (paid) | Won 269 029 739 | |
| | | | **Won 1 553 029 739** | |
| Mishandling of oil supply | 0.5 | Clean-up (paid) | ¥8 650 249 | ¥3 718 455 paid by shipowner's insurer. |
| | | Indemnification (paid) | ¥984 327 | |
| | | | **¥9 634 576** | |
| | | Other damage to property | US$3 103 | |
| | | Other loss of income (agreed) | US$2 560 | |
| | | | **US$5 663** | |
| Collision | 94 | Clean-up | ¥314 838 937 | ¥279 973 101 recovered by way of recourse action. |
| | | Fishery-related | ¥46 726 661 | |
| | | Indemnification | ¥5 012 855 | |
| | | | **¥366 578 453** | |
| Sinking | Unknown | Clean-up (paid) | Won 12 393 138 987 | |
| | | Fishery-related (paid) | Won 7 960 494 932 | |
| | | Oil removal operation (paid) | Won 6 824 362 810 | |
| | | | **Won 27 177 996 729** | |
| Contact with fender | 1 800 | Clean-up (paid) | Won 9 033 000 000 | US$13.5 million paid by shipowner's insurer. |
| | | Fishery-related (paid) | Won 1 112 000 000 | |
| | | Environmental studies (claimed) | Won 114 000 000 | |
| | | | **Won 10 259 000 000** | |
| Collision | 4 | | | Total damage less than owner's liability. Indemnification not requested. |
| Grounding | 72 360 | Clean-up (paid) | £22 773 470 | £7 395 748 paid by shipowner's insurer. |
| | | Other damage to property (paid) | £443 972 | |
| | | Fishery-related (paid) | £10 154 314 | |
| | | Tourism-related (paid) | £ 2 389 943 | |
| | | Other loss of income (paid) | £1 044 785 | |
| | | | **£36 806 484** | |
| | | Indemnification (paid) | £1 835 035 | |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 87 | *Kugenuma Maru* | 6.3.96 | Kawasaki, Japan | Japan | 57 | ¥1 175 055 (estimate) |
| 88 | *Kriti Sea* | 9.8.96 | Agioi Theodoroi, Greece | Greece | 62 678 | €6 576 100 (estimate) |
| 89 | *N° 1 Yung Jung* | 15.8.96 | Busan, Republic of Korea | Republic of Korea | 560 | Won 122 million |
| 90 | *Nakhodka* | 2.1.97 | Oki island, Japan | Russian Federation | 13 159 | 1 588 000 SDR |
| 91 | *Tsubame Maru N°31* | 25.1.97 | Otaru, Japan | Japan | 89 | ¥1 843 849 |
| 92 | *Nissos Amorgos* | 28.2.97 | Maracaibo, Venezuela | Greece | 50 563 | Bs3 473 million (estimate) |
| 93 | *Daiwa Maru N°18* | 27.3.97 | Kawasaki, Japan | Japan | 186 | ¥3 372 368 (estimate) |
| 94 | *Jeong Jin N°101* | 1.4.97 | Busan, Republic of Korea | Republic of Korea | 896 | Won 246 million |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Mishandling of oil supply | 0.3 | Clean-up<br>Indemnification | ¥1 981 403<br>¥297 066<br>**¥2 278 469** | ¥1 197 267 recovered by way of recourse action. |
| Mishandling of oil supply | 30 | Clean-up and property damage (paid)<br>Fishery-related (paid)<br>Tourism (paid)<br>Miscellaneous (paid) | <br>€2 500 000<br>€1 100 000<br>€150 000<br>€24 000<br>**€3 774 000** | All claims paid by the shipowner's insurer. |
| Grounding | 28 | Clean-up (paid)<br>Salvage (paid)<br>Fishery-related (paid)<br>Loss of income (paid)<br>Cargo transhipment (paid)<br>Indemnification (paid) | Won 689 829 037<br>Won 20 376 927<br>Won 16 769 424<br>Won 6 161 710<br>Won 10 000 000<br>Won 28 071 490<br>**Won 771 208 588** | Won 690 million paid by shipowner's insurer. |
| Breaking | 6 200 | Clean-up (paid)<br>Fishery-related (paid)<br>Tourism-related (paid)<br>Causeway (paid) | ¥20 928 412 000<br>¥1 769 172 000<br>¥1 344 157 000<br>¥2 048 152 000<br>**¥26 089 893 000** | All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1971 Fund paid ¥7 422 192 000 and the 1992 Fund paid ¥7 708 778 000. |
| Overflow during loading operation | 0.6 | Clean-up<br>Indemnification | ¥7 673 830<br>¥457 497<br>**¥8 131 327** | ¥1 710 173 paid by shipowner's insurer. |
| Grounding | 3 600 | Clean-up (settled)<br>Clean-up (settled)<br>Clean-up (claimed)<br>Fishery-related (settled)<br>Fishery-related (settled)<br>Fishery-related (claimed)<br>Tourism-related (settled)<br>Environmental damage (claimed)<br>Miscellaneous (claimed) | Bs3 523 252 942<br>US$35 850<br>Bs78 906 071<br>Bs133 011 848<br>US$16 033 389<br>US$30 000 000<br>Bs8 188 078<br>US$60 250 396<br>Bs540 000 000 | Bs1 254 619 385 and US$4 008 347 paid by shipowner's insurer. Bs17 501 083 and US$9 745 882 paid by 1971 Fund.<br><br>Clean-up (claimed) settled for Bs70 675 468, but claim not withdrawn from Court. |
| Mishandling of oil supply | 1 | Clean-up<br>Indemnification | ¥415 600 000<br>¥865 406<br>**¥416 465 406** | |
| Overflow during loading operation | 124 | Clean-up<br>Indemnification | Won 418 000 000<br>Won 58 000 000<br>**Won 476 000 000** | |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 95 | *Osung N°3* | 3.4.97 | Tunggado, Republic of Korea | Republic of Korea | 786 | 104 500 SDR (estimate) |
| 96 | *Plate Princess* | 27.5.97 | Puerto Miranda, Venezuela | Malta | 30 423 | 3.6 million SDR (estimate) |
| 97 | *Diamond Grace* | 2.7.97 | Tokyo Bay, Japan | Panama | 147 012 | 14 million SDR |
| 98 | *Katja* | 7.8.97 | Le Havre, France | Bahamas | 52 079 | FFr48 million (estimate) |
| 99 | *Evoikos* | 15.10.97 | Strait of Singapore | Cyprus | 80 823 | 8 846 942 SDR |
| 100 | *Kyungnam N°1* | 7.11.97 | Ulsan, Republic of Korea | Republic of Korea | 168 | Won 43 543 015 |
| 101 | *Pontoon 300* | 7.1.98 | Hamriyah, Sharjah, United Arab Emirates | Saint Vincent and the Grenadines | 4 233 | Not available |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Grounding | Unknown | Clean-up (paid)<br>Fishery-related (paid)<br>Oil removal operation (paid)<br>**Won 7 674 268 001** | Won 866 906 355<br>Won 68 795 729<br>Won 6 738 565 917 | The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund. |
| | | Clean-up (paid)<br>Fishery-related (paid)<br>**¥851 039 365** | ¥669 252 879<br>¥181 786 486 | |
| | | Indemnification | Won 37 963 635 | |
| Overflow during loading operation | 3.2 | Fishery-related (claimed) | US$47 000 000 | Claims against the 1971 Fund time-barred. |
| Grounding | 1 500 | Clean-up (paid)<br>Fishery-related (paid)<br>Tourism-related (paid)<br>Other loss of income (paid)<br>Miscellaneous (settled)<br>**¥1 416 000 000** | ¥1 100 000 000<br>¥263 000 000<br>¥23 000 000<br>¥8 000 000<br>¥22 000 000 | Total amount of established claims did not exceed shipowner's liability. |
| Striking a quay | 190 | Clean-up (paid)<br>Clean-up (claimed) | €2 468 593<br>€975 684 | €2 558 406 paid by shipowner's insurer. Practically certain that total of the established claims will be less than shipowner's liability. |
| | | Fishery-related (paid)<br>Other damage to property (paid)<br>**€3 534 090** | €50 000<br>€39 813 | Claims pending in court. |
| Collision | 29 000 | *Singapore*<br>Clean-up (paid)<br>Other damage to property (paid)<br>Other damage to property (claimed)<br>**S$11 567 000** | <br>S$10 000 000<br>S$1 500 000<br>S$67 000 | All settled claims in Singapore and Malaysia paid by shipowner. |
| | | *Malaysia*<br>Clean-up (paid)<br>Fishery-related (paid)<br>**RM2 624 000** | <br>RM1 424 000<br>RM1 200 000 | |
| | | *Indonesia*<br>Clean-up (claimed)<br>Environmental damage (claimed)<br>Fishery-related (claimed)<br>**US$3 363 000** | <br>US$152 000<br>US$3 200 000<br>US$11 000 | All claims in Indonesia dismissed by limitation court in Singapore. |
| Grounding | 15-20 | Clean-up (paid)<br>Fishery-related (paid)<br>**Won 265 023 170** | Won 189 214 535<br>Won 82 818 635 | The shipowner has paid Won 26 622 030. |
| Sinking | 4 000 | Clean-up (settled)<br>Fishery-related (settled)<br>**Dhs 7 943 618** | Dhs 6 345 655<br>Dhs 1 597 963 | A further payment of Dhs 1.6 million will be made to claimants whose claims were settled at 75% of the approved amounts due to increase in level of payments. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GRT) | Limit of shipowner's liability under 1969 CLC |
|---|---|---|---|---|---|---|
| 102 | *Maritza Sayalero* | 8.6.98 | Carenero Bay, Venezuela | Panama | 28 338 | 3 000 000 SDR (estimate) |
| 103 | *Al Jaziah 1* | 24.1.00 | Abu Dhabi, United Arab Emirates | Honduras | 681 | 3 000 000 SDR |
| 104 | *Alambra* | 17.9.00 | Estonia | Malta | 75 366 | 7 600 000 SDR (estimate) |
| 105 | *Natuna Sea* | 3.10.00 | Indonesia | Panama | 51 095 | 6 100 000 SDR (estimate) |
| 106 | *Zeinab* | 14.4.01 | United Arab Emirates | Georgia | 2 178 | 3 000 000 SDR |
| 107 | *Singapura Timur* | 28.5.01 | Malaysia | Panama | 1 369 | 102 000 SDR (estimate) |

## Notes

See page 204.

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1971 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Ruptured discharge pipe | 262 | *Claims against shipowner pending in court:*<br>Clean-up and environmental damage (claimed) | Bs10 000 000 | The 1971 Fund considers that the Conventions do not apply to this incident. Claims against Fund time-barred. |
| Sinking | 100-200 | Clean-up/preventive measures (paid) | £920 000 | The Funds have taken recourse action against the shipowner. The 1971 and 1992 Funds have each contributed 50% of the amounts paid. |
| Corrosion | 300 (estimate) | Clean-up (settled)<br>Economic loss (claimed)<br>**US$720 000**<br>Economic loss (claimed) | US$620 000<br>US$100 000<br><br>EEK38 800 000<br>**EEK38 800 000** | All settled claims have been paid by the shipowner's insurer.<br><br>Claims subject to legal proceedings. |
| Grounding | 7 000 (estimate) | *Singapore*<br>Clean-up and fisheries (paid)<br>**US$8 400 000**<br>*Malaysia*<br>Clean-up (paid)<br>Fishery-related (paid)<br>**RM2 205 000**<br>*Indonesia*<br>Clean-up and fisheries (paid)<br>**US$2 800 000** | <br>US$8 400 000<br><br><br>RM1 300 000<br>RM905 000<br><br><br>US$2 800 000 | All settled claims have been paid by the shipowner's insurer. |
| Sinking | 400 | Clean-up (paid)<br>Clean-up (paid) | US$844 000<br>Dhs2 480 000 | The 1971 and 1992 Funds have each contributed 50% of the amounts paid. |
| Collision | Unknown | Clean-up (paid)<br>Preventive measures (paid)<br>Preventive measures/environmental risk assessment (paid)<br>Indemnification (paid) | US$62 896<br>¥11 436 000<br><br>US$783 500<br>US$25 000 | US$103 378 paid by the shipowner's insurer.<br><br>The 1971 Fund has recovered £317 317 from its insurer in respect of compensation and indemnification. The insurer has recovered £185 000 from the colliding vessel interests. |

# ANNEX XXIII

## 1992 FUND: SUMMARY OF INCIDENTS (31 DECEMBER 2006)

For this table, damage has been grouped into the following categories:

- Clean-up
- Preventive measures
- Fishery-related
- Tourism-related
- Farming-related
- Other loss of income
- Other damage to property
- Environmental damage/studies

Where claims are shown in the table as settled this means that the amounts have been agreed with the claimants, but not necessarily that the claims have been paid or paid in full.

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GT) | Limit of shipowner's liability under applicable CLC |
|---|---|---|---|---|---|---|
| 1 | Incident in Germany | 20.6.96 | North Sea coast, Germany | Unknown | Unknown | Unknown |
| 2 | *Nakhodka* | 2.1.97 | Oki island, Japan | Russian Federation | 13 159 | 1 588 000 SDR |
| 3 | *Osung N°3* | 3.4.97 | Tunggado, Republic of Korea | Republic of Korea | 786 | 104 500 SDR (estimate) |
| 4 | Incident in United Kingdom | 28.9.97 | Essex, United Kingdom | Unknown | Unknown | Unknown |
| 5 | *Santa Anna* | 1.1.98 | Devon, United Kingdom | Panama | 17 134 | 10 196 280 SDR |
| 6 | *Milad 1* | 5.3.98 | Bahrain | Belize | 801 | Not available |
| 7 | *Mary Anne* | 22.7.99 | Philippines | Philippines | 465 | 3 000 000 SDR |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1992 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Unknown | Unknown | Clean-up (claimed) | €1 390 000 | Legal proceedings were taken against the owner and insurer of the *Kuzbass* by the German authorities. In an out-of-court settlement the shipowner/insurer and the 1992 Fund have agreed to pay 20% and 80% respectively of the final assessed amount. |
| Breaking | 6 200 | Clean-up (paid)<br>Fishery-related (paid)<br>Tourism-related (paid)<br>Causeway (paid) | ¥20 928 412 000<br>¥1 769 172 000<br>¥1 344 157 000<br>¥2 048 152 000<br>**¥26 089 893 000** | All claims have been settled and paid. A global settlement agreement was reached between the shipowner/insurer and the IOPC Funds whereby the insurer paid ¥10 956 930 000 and the Funds paid ¥15 130 970 000, of which the 1992 Fund paid ¥7 422 192 000 and the 1971 Fund paid ¥7 708 778 000. |
| Grounding | Unknown | Clean-up (paid)<br>Fishery-related (paid)<br>Oil removal operation (paid)<br><br>Clean-up (paid)<br>Fishery-related (paid) | Won 866 906 355<br>Won 68 795 729<br>Won 6 738 565 917<br>**Won 7 674 268 001**<br><br>¥669 252 879<br>¥181 786 486<br>**¥851 039 365** | All claims have been settled and paid. The 1992 Fund paid ¥340 million to claimants. This amount was later reimbursed by the 1971 Fund. |
| Unknown | Unknown | Clean-up (claimed) | £10 000 | Claim not pursued. |
| Grounding | 280 | Clean-up (settled) | £30 000 | Claim paid by the shipowner's insurer. |
| Damage to hull | 0 | Pre-spill preventive measures (paid) | BD 21 168 | The 1992 Fund did not pursue recourse action against the shipowner. |
| Sinking | Unknown | Clean-up (paid)<br>Clean-up (paid) | US$2 500 000<br>PHP 1 800 000 | Claims settled by the shipowner's insurer without the 1992 Fund's involvement. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GT) | Limit of shipowner's liability under applicable CLC |
|---|---|---|---|---|---|---|
| 8 | *Dolly* | 5.11.99 | Martinique | Dominican Republic | 289 | 3 000 000 SDR |
| 9 | *Erika* | 12.12.99 | Brittany, France | Malta | 19 666 | FFr84 247 733 |
| 10 | *Al Jaziah 1* | 24.1.00 | Abu Dhabi, United Arab Emirates | Honduras | 681 | 3 000 000 SDR |
| 11 | *Slops* | 15.6.00 | Piraeus, Greece | Greece | 10 815 | None |
| 12 | Incident in Spain | 5.9.00 | Spain | Unknown | Unknown | Unknown |
| 13 | Incident in Sweden | 23.9.00 | Sweden | Unknown | Unknown | Unknown |
| 14 | *Natuna Sea* | 3.10.00 | Indonesia | Panama | 51 095 | 22 400 000 SDR (estimate) |
| 15 | *Baltic Carrier* | 29.3.01 | Denmark | Marshall Islands | 23 235 | DKr118 million |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1992 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Sinking | Unknown | Preventive measures (claimed) | €1 457 753 | |
| Breaking | 14 000 (estimate) | Clean-up (settled)<br>Fishery-related (settled)<br>Property damage (settled)<br>Tourism (settled)<br>Other loss of income (settled)<br>Claims in court | €31 806 500<br>€10 729 000<br>€2 152 100<br>€76 450 000<br>€6 908 000<br>€59 800 000<br>**€187 845 600** | Payments made by the shipowner's insurer for €12 800 000 and by the 1992 Fund for €115 245 000. Further claims totalling €286 500 000 have been filed in court by the French State and Total SA, but these will only be pursued to the extent that all other claims are paid in full. |
| Sinking | 100-200 | Clean-up/preventive measures (paid) | £920 000 | The 1971 and 1992 Funds have each contributed 50% of the amounts paid. The Funds have taken recourse action against the shipowner. |
| Fire | Unknown | Clean-up (claimed) | €2 323 000 | The 1992 Fund considered that the *Slops* did not fall within the definition of 'ship'. Two contractors took legal action against the 1992 Fund. The Greek Supreme Court held that the *Slops* fell within that definition. |
| Unknown | Unknown | Clean-up (claimed) | €6 000 | The Spanish authorities have recovered their costs from the alleged source of the pollution. |
| Unknown | Unknown | Clean-up (claimed) | SEK5 260 000 | The Swedish State brought legal action against the owner of the *Alambra*, his insurer and the 1992 Fund. Following an out-of-court settlement between the State and the shipowner/insurer, the action against the Fund was withdrawn. |
| Grounding | 7 000 (estimate) | *Singapore*<br>Clean-up and fisheries (paid)<br><br>*Malaysia*<br>Clean-up (paid)<br>Fishery-related (paid)<br><br>*Indonesia*<br>Clean-up and fisheries (paid) | <br>US$8 400 000<br><br><br>RM1 300 000<br>RM905 000<br>**RM2 205 000**<br><br>US$2 800 000 | All claims have been paid by the shipowner's insurer. |
| Collision | 2 500 | Clean-up (paid)<br>Oil disposal (paid)<br>Property damage/economic loss (paid)<br>Fishery-related (paid)<br>Environmental monitoring (paid)<br><br>Clean-up (claimed) | DKr15 900 000<br>DKr17 400 000<br>DKr1 600 000<br>DKr19 700 000<br>DKr258 000<br>**DKr54 858 000**<br><br>DKr50 000 000 | All claims paid by the shipowner's insurer. The 1992 Fund is unlikely to be called upon to make any compensation payments. |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GT) | Limit of shipowner's liability under applicable CLC |
|---|---|---|---|---|---|---|
| 16 | *Zeinab* | 14.4.01 | United Arab Emirates | Georgia | 2 178 | 3 000 000 SDR |
| 17 | Incident in Guadeloupe | 30.6.02 | Guadeloupe | Unknown | Unknown | Unknown |
| 18 | Incident in United Kingdom | 29.9.02 | United Kingdom | Unknown | Unknown | Unknown |
| 19 | *Prestige* | 13.11.02 | Spain | Bahamas | 42 820 | €22 777 986 |
| 20 | *Spabunker IV* | 21.1.03 | Spain | Spain | 647 | 3 000 000 SDR |
| 21 | Incident in Bahrain | 15.3.03 | Bahrain | Unknown | Unknown | Unknown |
| 22 | *Buyang* | 22.4.03 | Geoje, Republic of Korea | Republic of Korea | 187 | 3 000 000 SDR |
| 23 | *Hana* | 13.5.03 | Busan, Republic of Korea | Republic of Korea | 196 | 3 000 000 SDR |
| 24 | *Victoriya* | 30.8.03 | Syzran, Russian Federation | Russian Federation | 2 003 | 3 000 000 SDR |

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1992 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Sinking | 400 | Clean-up (paid)<br>Clean-up (paid) | US$844 000<br>Dhs2 480 000 | The 1971 and 1992 Funds have each contributed 50% of the amounts paid. |
| Unknown | Unknown | Clean-up (claimed) | €340 000 | The source of the spill appears to have been a general cargo vessel. It is unlikely therefore that the 1992 Fund will be called upon to make any compensation payments. |
| Unknown | Unknown | Clean-up (paid) | £5 400 | |
| Breaking | Unknown | *Spain*<br>Clean-up/preventive measures (claimed)<br>Property damage (claimed)<br>Fisheries and mariculture (claimed)<br>Tourism (claimed)<br>Miscellaneous (claimed)<br>**€610 668 804**<br>*France*<br>Clean-up (claimed)<br>Property damage (claimed)<br>Fisheries and mariculture (claimed)<br>Tourism (claimed)<br>Miscellaneous (claimed)<br>**€118 540 358**<br>*Portugal*<br>Clean-up (claimed)<br>**€2 189 923** | <br>€563 300 482<br>€2 065 970<br>€42 852 264<br>€688 303<br>€1 761 785<br><br><br>€77 960 269<br>€87 772<br>€14 240 519<br>€25 268 938<br>€982 860<br><br><br>€2 189 923 | The shipowner has deposited the limitation amount (€22 777 986) with the Spanish Court. The 1992 Fund has paid €113 920 000 to the Spanish Government and €328 448 to the Portuguese Government. |
| Sinking | Unknown | *Spain*<br>Preventive measures and wreck removal<br>Clean-up<br>**€6 028 000**<br>*Gibraltar*<br>Clean-up | <br>€5 400 000<br>€628 000<br><br>£18 350 | |
| Unknown | Unknown | Clean-up/preventive measures (settled)<br>Fisheries (settled)<br>**US$1 231 000** | US$689 000<br>US$542 000 | All claims have been paid by the 1992 Fund. |
| Grounding | 35-40 | Clean-up/preventive measures (settled)<br>Fisheries (settled)<br>**Won 1 335 000 000** | Won 1 007 000 000<br>Won 328 000 000 | All claims have been paid by the shipowner's insurer. |
| Collision | 34 | Clean-up/preventive measures (settled)<br>Fisheries (settled)<br>Property damage (settled)<br>**Won 1 283 650 000** | Won 1 242 000 000<br>Won 22 500 000<br>Won 19 150 000 | All claims have been paid by the shipowner's insurer. |
| Fire | Unknown | Clean-up/preventive measures (claimed)<br>Fisheries (not yet claimed) | US$500 000 | |

| Ref | Ship | Date of incident | Place of incident | Flag State of ship | Gross tonnage (GT) | Limit of shipowner's liability under applicable CLC |
|---|---|---|---|---|---|---|
| 25 | *Duck Yang* | 12.9.03 | Busan, Republic of Korea | Republic of Korea | 149 | 3 000 000 SDR |
| 26 | *Kyung Won* | 12.9.03 | Namhae, Republic of Korea | Republic of Korea | 144 | 3 000 000 SDR |
| 27 | *Jeong Yang* | 23.12.03 | Yeosu, Republic of Korea | Republic of Korea | 4 061 | 4 510 000 SDR |
| 28 | *№11 Hae Woon* | 22.7.04 | Geoje, Republic of Korea | Republic of Korea | 110 | 4 510 000 SDR |
| 29 | *№7 Kwang Min* | 24.11.05 | Busan, Republic of Korea | Republic of Korea | 139 | 4 510 000 SDR |
| 30 | *Solar 1* | 11.8.06 | Guimaras Straits, the Philippines | Philippines | 998 | 4 510 000 SDR |
| 31 | *Shosei Maru* | 28.11.06 | Seto Inland Sea, Japan | Japan | 153 | 4 510 000 SDR |

## Notes

See page 204.

| Cause of incident | Quantity of oil spilled (tonnes) | Compensation (amounts paid by 1992 Fund, unless indicated to the contrary) | | Notes |
|---|---|---|---|---|
| Sinking | 300 | Clean-up/preventive measures (settled)<br>Property damage/economic losses (settled) | Won 2 883 000 000<br>Won 43 000 000<br>**Won 2 926 000 000** | All claims have been paid by the shipowner's insurer. |
| Stranding | 100 | Clean-up/preventive measures (settled)<br>Fisheries (settled) | Won 2 921 000 000<br>Won 407 000 000<br>**Won 3 328 000 000** | |
| Collision | 700 | Clean-up/preventive measures (settled)<br>Fisheries (settled)<br>Post-spill studies (settled)<br>Economic costs (claimed) | Won 3 992 000 000<br>Won 78 400 000<br>Won 140 000 000<br>Won 115 000 000<br>**Won 4 325 400 000** | All claims have been paid by the shipowner's insurer. |
| Collision | 12 | Clean-up/preventive measures (settled) | Won 354 000 000<br>**Won 354 000 000** | All claims have been paid by the shipowner's insurer. |
| Collision | 64 | Clean-up/preventive measures (paid)<br>Fishery-related (paid)<br>Fishery-related (claimed)<br>Tourism (claimed) | Won 1 900 000 000<br>Won 112 100 000<br>Won 479 018 000<br>Won 163 200 000<br>**Won 2 654 318 000** | The 1992 Fund has taken recourse action against both the colliding vessels. |
| Sinking | Unknown | Clean-up (claimed)<br>Clean-up/preventive measures (paid)<br>Clean-up (claimed)<br>Fishery-related (settled)<br>Fishery-related (claimed)<br>Tourism-related (settled)<br>Tourism-related (claimed) | US$6 500 000<br>¥45 100 000<br>PHP 160 000 000<br>PHP 120 000 000<br>PHP 316 725 000<br>PHP 594 000<br>PHP 208 000 000<br>**PHP 806 123 000** | Further claims are expected. The insurer has made payments of PHP 60 000 000, ¥45 100 000 and US$2.4 million, and the 1992 Fund has made payments totalling PHP 108 million and US$1.65 million. This incident falls under the STOPIA 2006 agreement (see Section 10). |
| Collision | 60 | Clean-up, property damage and fishery-related claims (estimated) | ¥1 142 000 | |

## Notes to Annexes XXII and XXIII

1 Amounts are given in national currencies. The relevant conversion rates as at 29 December 2006 are as follows:

£1 =

| | | | | | |
|---|---|---|---|---|---|
| Algerian Dinar | Din | 139.17 | Moroccan Dirham | Mor Dhr | 16.5379 |
| Bahrain Dinar | BD | 0.7379 | Philippines Peso | PHP | 95.9199 |
| Canadian Dollar | Can$ | 2.2776 | Republic of Korea Won | Won | 1820.15 |
| Danish Krone | DKr | 11.0641 | Russian Rouble | Rb | 51.523 |
| Estonian Kroon | EEK | 23.2227 | Singapore Dollar | S$ | 3.0029 |
| Euro | € | 1.4842 | Swedish Krona | SEK | 13.3928 |
| Indonesian Rupiah | Rp | 17601.6 | UAE Dirham | Dhs | 7.1881 |
| Japanese Yen | ¥ | 233.204 | United States Dollar | US$ | 1.9572 |
| Malaysian Ringgit | RM | 6.9048 | Venezuelan Bolivar | Bs | 6543.72 |

£1 = 1.3015 SDR or 1 SDR = £0.7683

2 The following currencies were replaced by the Euro on 1 January 2002 at the following conversion rates. The equivalent values relative to the Pound Sterling, as at 29 December 2006, are also given.

| | | €1= | £1= |
|---|---|---|---|
| Finnish Markka | FM | 5.9457 | 8.6534 |
| French Franc | FFr | 6.5596 | 9.5467 |
| German Mark | DM | 1.9558 | 2.8465 |
| Greek Drachma | Drs | 340.75 | 495.9276 |
| Italian Lira | LIt | 1936.27 | 2818.0474 |
| Spanish Peseta | Pts | 166.386 | 242.1582 |

3 The inclusion of claimed amounts is not to be understood as indicating that either the claim or the amount is accepted by the 1971 or 1992 Funds.

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